DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2005–0051]

44 CFR Part 206

RIN 1660–AA44

Special Community Disaster Loans Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Emergency Management Agency (FEMA) proposes to amend its regulations regarding the Special Community Disaster Loans Program to implement loan cancellation provisions for Special Community Disaster Loans provided by FEMA to local governments in the Gulf region following Hurricanes Katrina and Rita. This rule does not propose the automatic cancellation of all Special Community Disaster Loans. This rule proposes procedures and requirements for governments who received Special Community Disaster Loans to apply for cancellation of loan obligations as authorized by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. The proposed procedures are intended to provide sufficient information to FEMA to determine when cancellation of a Special Community Disaster Loan, in whole or in part, is warranted. This proposed rule would not apply to any loans made under FEMA's traditional Community Disaster Loan program which is governed under separate regulations.

DATES: Comments on the proposed rule, including the Paperwork Reduction Act information collection, are due on or before June 2, 2009.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2005–0051, by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

E-mail: *FEMA-RULES@dhs.gov*. Include Docket ID FEMA–2005–0051 in the subject line of the message.

Fax: 703–483–2999.

Mail/Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: James A. Walke, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472–3300, or call (202) 646–2751, or e-mail *james.walke@dhs.gov*.

Requests for additional information regarding FEMA's Paperwork Reduction Act information collection requirements or copies of the information collection should be made to Director, Records Management and Privacy, FEMA, 1800 Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rulemaking

FEMA encourages public participation in this rulemaking. All submissions received must include the agency name and docket ID (FEMA-2005–0051). Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

All comments received, as well as this document, are available on the public docket for this rulemaking. For access to the docket, go to the Federal eRulemaking Portal at *http://www.regulations.gov*. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

At this time, FEMA does not anticipate it will hold a public meeting for this rulemaking project.

I. Background and Purpose

The Federal Emergency Management Agency's (FEMA's) Community Disaster Loan (CDL) Program provides funding to help local governments that have incurred significant loss in revenue due to a presidentially declared disaster, revenue that is necessary for local governments to provide essential municipal services, such as public schools, fire and police services, and sanitation services. The CDL Program for local governments began in 1970 as a program of community disaster grants. In 1974, Congress replaced the grant program with a program of community disaster loans. Since 1976, FEMA has issued 55 Community Disaster Loans under this program, totaling approximately $233.5 million. FEMA's traditional CDL Program is governed under 44 CFR part 206 subpart K. *See* 44 CFR 206.360.

On August 29, 2005, Hurricane Katrina hit Louisiana, Mississippi, Florida, and Alabama and emergencies were declared in each of the 4 States—the most for any single disaster in FEMA history. Hurricane Rita soon followed on September 21, 2005, in an area that had already been affected by Hurricane Katrina. Federal disaster declarations for the storms covered 90,000 square miles of the United States, an area roughly the size of the State of Oregon. The hurricanes directly affected over 1.5 million people, displaced approximately 771,000 people, and resulted in a peak shelter population of over 267,000 people.

Hurricanes Katrina and Rita devastated communities in Louisiana, Texas, Mississippi, and Alabama. Tax revenue was lost because people no longer lived in the area. Residents who remained were unable to pay taxes due to unemployment. Mass evacuations and limited sheltering options in the region resulted in fewer households purchasing goods and services and, in turn, paying sales tax. Although the tax base was severely depleted, communities still had to provide essential services such as police, medical personnel, teachers, and firefighters. Those costs are not eligible for Stafford Act funding from FEMA under the Public Assistance Program or under any other FEMA grant program. Further, the traditional CDL program cap of $5 million per individual loan was too small for the catastrophic and long term nature of these disasters.

Realizing the catastrophic nature of Hurricanes Katrina and Rita, the unusual circumstances facing these local communities, and the lack of pre-existing sources of Federal funding, Congress passed the Community Disaster Loan Act of 2005, Public Law 109–88 (Oct. 7, 2005) (2005 Act). The 2005 Act authorized FEMA to transfer funds appropriated in the Second Emergency Supplemental Appropriations Act To Meet Immediate Needs Arising From The Consequences Of Hurricane Katrina, 2005, Public Law 109–62 (Sept. 8, 2005), to support up to $1 billion in loan authority to assist communities impacted by Hurricanes Katrina and Rita. Loans issued by FEMA under the 2005 Act are referred to as "Special Community Disaster Loans." For these Special Community Disaster Loans (Special CDLs), the 2005 Act added three elements to the traditional CDL program under section 417 of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act (Stafford Act), 42 U.S.C. 5184: (1) It removed the $5 million limit on individual loans; (2) it restricted the loans ''to assist local governments in providing essential service;'' and (3) it made the loan cancellation provision of section 417(c)(1) of the Stafford Act inapplicable.

FEMA published an interim rule on October 18, 2005, to implement the provisions of the 2005 Act. *See* at 70 FR 60443; *also* 44 CFR 206.370–206.377. The interim rule took effect immediately to allow FEMA to provide these loans as soon as possible to the local governments already impacted by Hurricanes Katrina and Rita. Special CDLs, and their accompanying regulations, only apply to communities affected by Katrina and Rita. Further, FEMA was only authorized to approve loans in either the fiscal year in which the disaster occurred (FY 2005) or the fiscal year immediately following that year (FY 2006). Although FEMA is no longer authorized to grant new applications for Special CDLs, FEMA has chosen not to remove the Special CDL regulations at this time, as the conditions such as loan administration, repayment, terms, and restrictions on the use of loan funds may still be applicable.

After FEMA published its interim rule, Congress passed the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Public Law 109–234 (June 15, 2006) (2006 Act), which appropriated funds to support $371,733,000 in loan authority in addition to the loans authorized under the 2005 Act. However, certain eligibility criteria for the 2006 Act program were different from those in the 2005 Act program. The 2006 Act included three changes: (1) The maximum loan amount was increased to 50 percent of the applicant's operating budget the fiscal year of the disaster; (2) the loan analysis could only consider ''tax revenue'' loss and not ''other revenues'' as allowed for in the 2005 Act; and (3) applicants were required to demonstrate actual loss in tax revenues of 25 percent or greater. The 2006 Act, like the 2005 Act, made the loan cancellation provision of section 417(c)(1) of the Stafford Act inapplicable.

As a result of the 2005 and 2006 Acts, FEMA made 152 loans totaling $1,270,501,241 to 109 eligible applicants in Mississippi and Louisiana. Under the 2005 Act, FEMA made 52 loans totaling $261,135,806 in Mississippi and 84 loans totaling $738,864,194 in Louisiana. In total, $1 billion of the $1 billion loan level authorized in the 2005 Act was provided to eligible applicants devastated by Hurricanes Katrina and Rita. Under the 2006 Act, FEMA made four additional loans totaling $9,485,908 in Mississippi and twelve additional loans totaling $261,015,333 in Louisiana. In total, $270,501,241 of the $371,733,000 loan level authorized in the 2006 Act was provided to eligible applicants devastated by Hurricanes Katrina and Rita. No additional eligible applicants were identified prior to the September 30, 2006 deadline for the remaining $101,231,759 of the loan authority.

The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28, section 4502(a), 119 Stat. 2061 (May 25, 2007) (2007 Act), removed the loan cancellation prohibitions contained in the 2005 and 2006 Acts. This amendment retroactively applies to the dates of enactment of both Acts. This statutory change now gives FEMA discretionary authority, limited by the language in section 417(c)(1) of the Stafford Act (42 U.S.C. 5184), to cancel Special CDLs.

With this new authority, FEMA shall cancel a loan if ''the revenues of the local government during the full three fiscal year period following the disaster are insufficient to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character.'' This authority is the same as FEMA's authority to cancel loans issued under its traditional CDL program, which have implementing regulations at 44 CFR 206.366. This rulemaking proposes procedures and requirements for local governments to apply for cancellation of Special CDLs, that are the same as those established for the traditional CDL program. FEMA expects to determine whether a local government's revenues are insufficient using the same method FEMA currently uses to determine loan cancellations under the traditional CDL program. Currently, if an applicant has a three year cumulative operating deficit, FEMA analyzes the applicant's revenue during that time to determine if the deficit was caused by insufficient revenues. FEMA determines this by subtracting the applicant's actual post-disaster revenues from the revenue the applicant expected to obtain had the disaster not occurred. This net difference is the estimated revenue loss. If revenue loss does not account for the entire deficit, FEMA examines the applicant's disaster-related expenditures to determine if an increase in expenditures contributed to the deficit. Based on the results of this analysis, FEMA may cancel all or a part of the loan.

II. This Proposed Rule

With the passage of the 2007 Act, FEMA has been given the discretionary ability to cancel Special CDLs issued under the 2005 and 2006 Acts subject to the limitations of section 417(c) of the Stafford Act. Accordingly, FEMA proposes to amend its Special CDL regulations to include loan cancellation procedures and requirements.

Removing the prohibition against cancellation is consistent with FEMA's handling of loans provided to communities affected under all other disasters. For example, communities who receive traditional CDLs may be eligible for loan cancellation. Other communities who have met the cancellation requirements of section 417(c)(1) of the Stafford Act also have had loans cancelled.

Furthermore, FEMA believes the sustained financial long-term recovery of the communities affected by Hurricanes Katrina and Rita may continue to be at risk. For those communities that have not exhibited reasonable financial recovery after three years, cancellation may be appropriate, subject to the limitations of section 417(c) of the Stafford Act. A number of the Gulf Coast communities that carry Special Community Disaster Loans have argued that if they do not have the financial strength to repay these loans on a timely basis, going into default may further impede their ability to recover, affecting among other things, a municipality's ability to issue bonds.

This rule does not propose the automatic cancellation of all Special Community Disaster Loans. FEMA's authority to provide cancellation is limited to those communities whose revenues during the three full fiscal year period following the major disaster are insufficient to meet its operating budget, including additional disaster-related expenses of a municipal operation character. The proposed procedures are intended to provide sufficient information to FEMA to determine when cancellation of a Special Community Disaster Loan, in whole or in part, is warranted.

FEMA proposes to treat those affected by Hurricanes Katrina and Rita under the same terms as traditional CDL recipients. Section 417 of the Stafford Act provides FEMA with the cancellation authority for both the Special CDL Program and the traditional CDL Program. FEMA implemented cancellation provisions for the traditional CDL Program regulations at 44 CFR 206.366. FEMA has been applying these provisions to the traditional CDL Program since 1990 and has found them to be successful in providing the information necessary to determine whether cancellation is appropriate. Since the statutory authority to cancel the loans, as provided for in section 417(c)(1) of the Stafford Act, is now the same for both loan programs, FEMA proposes to use the same cancellation requirements and procedures for both loan programs to reduce confusion for the regulated public and reviewing officials.

FEMA may cancel ''* * * all or any part of Special Community Disaster Loans to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character.'' 42 U.S.C. 5184(c). For loan cancellation purposes, FEMA interprets the term ''operating budget'' to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government. Under the proposed cancellation procedures, the FEMA Assistant Administrator for the Disaster Assistance Directorate (Assistant Administrator) would review the Application for Loan Cancellation and a financial evaluation of the applicant to evaluate the local government's revenues and determine whether FEMA should cancel, in whole or in part, a Special CDL issued under the 2005 or 2006 Acts. FEMA would cancel a part of a loan, as opposed to the whole, in situations where the community's application for cancellation reflects that the community's revenues are not sufficient to repay the entire loan, but are sufficient to repay a portion thereof.

As limited by the Stafford Act, a community's eligibility for cancellation is based on a fixed period of time. The Assistant Administrator's decision must be based on the revenues of the local government during the three full fiscal year period following the major disaster. This means that since Hurricane Katrina occurred in August 2005, eligibility for cancellation can only be based on the revenues of the local government during the following three full fiscal years. The typical ''fiscal year,'' as used by the Federal government, runs from October 1 to September 30. Under this model, the three full fiscal year period after Hurricanes Rita and Katrina ended on September 30, 2008. For governments that operate under a different fiscal year, however, FEMA would modify the three-year period to reflect the 36 calendar months following the disaster.

All of the Special CDLs are three-year loans that may be drawn upon by the local community at its discretion. Once an amount is drawn down, interest begins to accrue on the loan from the date it is dispersed. Although communities may voluntarily make payments on the loan at any time, communities are not required to repay the loan or any related interest until five years after the date of the promissory note, unless otherwise extended by the Assistant Administrator. None of the loans referenced above will come due until October 2010 at the earliest. As of January 2009, two communities have voluntarily paid their loans in full, including accrued interest.

Communities applying for cancellation would be required to submit their Application for Loan Cancellation before the expiration date of their loan. This would allow FEMA the opportunity to cancel all or a part of the loan and forgive all related interest before the loan must be repaid. As long as the community applies for and is granted cancellation before the date its loan expires, then all interest on the amount of the loan that is cancelled would be forgiven regardless of the date that the amount was dispersed or the date that cancellation is granted.

If the Assistant Administrator determines that all or part of a community's Special CDL should be cancelled, the amount of principal would be cancelled, and the related interest would be forgiven. The Assistant Administrator's determination concerning loan cancellation would specify that any uncancelled principal and related interest must be repaid in accordance with the terms and conditions of the promissory note; and that, if repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on timely basis. Such repayments would be required to be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Chief Financial Officer. A loan or cancellation of a loan would not reduce or affect other disaster-related grants or other disaster assistance. However, FEMA will not make any cancellation that would result in a duplication of benefits to the applicant.

If the tax and other revenue rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced in the three fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster would be used without reduction for purposes of computing revenues received. This may result in decreasing the potential for loan cancellations.

If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures which are not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures would be reduced accordingly for purposes of evaluating any request for loan cancellation.

It is not the purpose of these loan programs to underwrite pre-disaster budget or actual deficits of the local government. Consequently, such deficits carried forward would reduce any amounts otherwise eligible for loan cancellation.

If FEMA disapproves an Application for Loan Cancellation, in whole or in part, the local government would be allowed to appeal and submit any additional information in support of the application within 60 days of the date of disapproval. The decision of the Assistant Administrator or designee would be final on the appeal of any disapproval of an application for cancellation.

The cancellation provisions would retroactively apply to the dates of enactment of the 2005 and 2006 Acts, so these proposed regulations would apply to all of the Special CDLs awarded by FEMA.

III. Regulatory Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), a ''significant regulatory action'' is subject to Office of Management and Budget (OMB) review and the requirements of Executive Order 12866. Section 3(f) of the Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule is an economically significant regulatory action under section 3(f) of Executive Order 12866 because it is expected to have an annual effect on the economy of more than $100 million, and materially alter the budgetary impact of the Special Community Disaster Loans Program. Accordingly, OMB has reviewed this rule.

As previously stated, the 2005 Act authorized FEMA to transfer funds appropriated in the Second Emergency Supplemental Appropriations Act To Meet Immediate Needs Arising From The Consequences Of Hurricane Katrina, 2005, (Pub. L. 109–62), to support up to $1 billion in loan authority to assist communities impacted by Hurricanes Katrina and Rita. Loans issued under the 2005 Act are referred to as Special Community Disaster Loans. The next year, the 2006 Act appropriated funds to support an additional $371,733,000 in loan authority in addition to loans authorized under the 2005 Act. Both the 2005 and 2006 Acts made the loan cancellation provision of section 417(c)(1) of the Stafford Act inapplicable, meaning FEMA had no authority to cancel these loans.

The 2007 Act removes the loan cancellation prohibitions contained in the 2005 and 2006 Acts. The amendment retroactively applies to the date of enactment of both the 2005 and 2006 Acts. This statutory change now gives FEMA discretionary authority, limited by the language in section 417(c)(1) of the Stafford Act, to cancel Special Community Disaster Loans issued pursuant to either the 2005 or 2006 Acts.

Under the 2005 Act, FEMA made 52 loans totaling $261,135,806 in Mississippi and 84 loans totaling $738,864,194 in Louisiana. In total, $1 billion of the $1 billion loan level authorized in the 2005 Act was provided to eligible applicants devastated by Hurricanes Katrina and Rita. Under the 2006 Act, FEMA made four additional loans totaling $9,485,908 in Mississippi and twelve additional loans totaling $261,015,333 in Louisiana. In total, $270,501,241 of the $371,733,000 loan level authorized in the 2006 Act was provided to eligible applicants devastated by Hurricanes Katrina and Rita. No additional eligible applicants were identified prior to the September 30, 2006 deadline for the remaining $101,231,759 of the loan authority.

As a result of the 2005 and 2006 Acts, FEMA made 152 Special Community Disaster Loans totaling $1,270,501,241 to 109 eligible applicants in Mississippi and Louisiana. The application period for these loans has closed, so no additional local governments can be granted loans under these programs. If all 152 loan recipients applied for and were found eligible for full cancellation under these proposed procedures, up to $1,270,501,241, plus any applicable interest and costs, could be cancelled. However, because the Special Community Disaster Loans operate as lines of credit from which applicants justifying need draw down, not all of the loan funds obligated have been distributed. As of March 16, 2009, only $831 million (approximately 65% of the total amount awarded) has been drawn down by applicants. FEMA expects that all communities with Special Community Disaster Loans will apply for cancellation because of the benefits cancellation could have assisting in the recovery of communities. Because FEMA cannot evaluate the individual financial situations of the communities without reviewing the data that would be submitted in the applications for cancellation, FEMA cannot predict at this time how many of those communities will be eligible for cancellation. FEMA solicits public input on this issue.

The purpose of this rule is to implement the cancellation provisions outlined in the 2007 Act which allow for the cancellation of Special Community Disaster Loans for those communities whose revenues during the full three-fiscal-year period following the major disaster are insufficient to meet the operating budget of the local government. The cancellation provisions apply only to Special Community Disaster Loans issued under the 2005 and 2006 Acts. Community Disaster Loans issued prior to the enactment of the 2005 or 2006 Acts, or other loans not issued under the authority of those Acts, are not affected by this rule. Consequently, this rule will have no impact on local governments that do not have a Special Community Disaster Loan.

FEMA proposes to use the cancellation procedures already familiar to communities who received traditional Community Disaster Loans. These procedures are located at 44 CFR 206.366 and have been used by loan recipients since 1990. In assessing the budgetary impact of using an alternative procedure, FEMA considered the effect of possible changes to these well-established cancellation procedures.

In considering alternatives, FEMA first considered the automatic cancellation of all Special Community Disaster Loans. However, the text of the statute and the legislative history show that Congress did not automatically forgive these loans, but allows for partial or full forgiveness of community disaster loan repayments if, after three years, local revenue remains insufficient to meet operating expenses. Next, FEMA considered revising the documents submitted by the local communities to prove that local revenue is insufficient to meet operating expenses. FEMA opted to retain the requirements used for the traditional Community Disaster Loan program that have proven accurate and efficient in determining whether local communities meet the requirements for cancellation of traditional Community Disaster Loans. Furthermore, the alternatives considered did not have a measurable effect on Federal costs and did not simplify program administration or consolidate or clarify existing definitions, procedures, or processes. Finally, the creation of additional or revised regulatory requirements would not be in concert with the intention of providing forgiveness consistent with previous disasters.

FEMA has found during the past 19 years that the cancellation provisions for the traditional Community Disaster Loan program work—they provide sufficient and accurate information on which FEMA can base its decision to cancel loans—and compliance on the part of the borrower is relatively easy. There are no significant issues with these existing procedures that require revision; however, those affected by these regulations are encouraged to identify problems and suggest solutions to those problems during the public comment period for this rule.

Communities affected by these regulations have already received the Special Community Disaster Loans. Therefore, these communities already have established systems and procedures in place to meet the loan maintenance and servicing requirements in 44 CFR 206.375(c). The documents already required under that paragraph meet some of the proposed financial information submission requirements for cancellation. The proposed administrative requirements for loan cancellation should not be too burdensome for either the loan applicant or FEMA. The documents that must be provided in an Application for Loan Cancellation would include: (1) Annual operating budgets for the fiscal year of the disaster and the three subsequent fiscal years (States and local governments should already have annual operating budgets as a matter of practice; therefore, this element should create no new burden on the applicants); (2) annual financial reports for the fiscal year of the disaster and the three subsequent fiscal years (these annual financial reports are already required to be submitted by 44 CFR 206.375(c), and should create no new burden on the applicants); (3) the following information concerning annual real estate property taxes pertaining to the community for the fiscal year of the disaster and the three subsequent fiscal years: the market value of the tax base, the assessment ratio, the assessed valuation, the tax levy rate and the taxes levied and collected (pursuant to pertinent State statutes, ordinances, regulations which prescribe the local government's system of budgeting, accounting and financial reporting in 44 CFR 206.374(b)(1)(ii)(B), and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' 44 CFR 13.26, local governments receiving loans must be audited annually; the information required to be submitted with the Application for Loan Cancellation is standard information contained in the annual financial reports resulting from these annual audits); (4) audit reports for the fiscal year of the disaster and the 3 subsequent fiscal years certifying to the validity of the operating statements (this is a standard element of the annual audit report and the requirement to provide this information should create no new burden on the applicant); and (5) other financial information specified in the Application for Loan Cancellation, which includes information such as unreimbursed disaster-related expenses.

The burden on the public is low with respect to new administrative requirements associated with submitting the Application for Loan Cancellation. FEMA estimates that the annual estimated cost to submit the Application for Loan Cancellation to be $4,850.32. FEMA made 152 Special Community Disaster Loans to 109 eligible applicants in Mississippi and Louisiana. Because the documents required to be submitted with an Application for Loan Cancellation are documents that each local government should already possess, FEMA estimates that it would take an average of 1 hour for local governments to prepare the Application for Loan Cancellation. Using wage rates from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Standard Occupation Classification (SOC) System, the median hourly wage for Emergency Management Specialists in Business and Financial Operations (SOC Code Number 13.1061) is $22.79 per hour. Adding 40 percent to the BLS figure to account for benefits, FEMA has calculated the burden using a wage rate of $31.91 per hour. Since there are a total of 152 Special Community Disaster Loans, it is estimated that the one time cost of compliance to submit the Application for Loan Cancellation for all loans is $4,850.32. This figure is calculated as follows: ((152 × 1) × $31.91).

If all 152 loan recipients applied, and were found eligible, for full cancellation under these proposed procedures, up to $1,270,501,241, plus any applicable interest and costs, could be cancelled, although as of March 16, 2009 only $831 million of that amount had been drawn down. Any funds cancelled will have a positive effect on the State and local economy by reducing on-going operating expenses related to the loan, as well as the debt for the loan. Although not a grant, the cancellation of these loans would affect the Federal government's budget much like a grant. The loans were originally provided out of the Federal Treasury. If the local governments' revenues are found to be insufficient to meet its operating budget, the principal amount of the loan and the related interest would be forgiven. The economic impact would be a transfer payment from the Federal government to the local government whose loan was cancelled.

The overall impact of this rule is, therefore, the cost to the applicant to apply for the cancellation, as well as the impact on the economy of potentially forgiving all Special Community Disaster Loans and any related interest and costs. The maximum total economic impact of this rule is approximately $1.3 billion (conservatively assuming that all funds awarded will be drawn down, and exclusive of any interest that may also be forgiven). However, without knowing the dollar amounts or even the number of loans that will be cancelled, it is impossible to predict the amount of the economic impact of this rule with any precision. Although the impact of the rule could be spread over multiple years as applications are received, processed, and loans cancelled, the total economic effect of a specific loan cancellation would only occur once, rather than annually.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

FEMA certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Section 601(5) defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. This proposed rule would affect the following entities, some of which might be small entities: The 109 eligible applicants devastated by Hurricanes Katrina and Rita located in Mississippi and Louisiana that received Special Community Disaster Loans authorized in the 2005 and 2006 Acts. This proposed rule will not impose any additional requirements on local governments that do not have a Special Community Disaster Loan.

As stated previously, the potential for loan cancellation under the proposed procedures would not have a negative impact on any loan applicant as any funds cancelled will have a positive beneficial effect on the State and local governments by reducing on-going operating expenses and debt related to the loan. We have previously explained that State and local governments that choose to seek loan cancellation consideration will need to spend a minimal amount of staff time preparing the required application. Such a minimal staffing burden is not considered to be a significant economic impact. Consequently, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*See* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. FEMA does not expect this rule to result in such expenditure since loan recipients applying for potential cancellation of a Special Community Disaster Loan will not result in any expenditure not already assumed. Additionally, this rule is expected to provide a benefit to the local governments by allowing for the cancellation of Special Community Disaster Loans for those communities whose revenues during the full three-fiscal-year period following the major disaster are insufficient to meet the operating budget of the local government. FEMA discusses this rule's effects elsewhere in this preamble.

D. Executive Order 13132, Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. It will not preempt any State laws. Eligible applicants who may apply for loan cancellation under these proposed procedures do so voluntarily and State policy making discretion is not affected. In accordance with section 6 of Executive Order 13132, FEMA determines that this rule will not have Federalism implications sufficient to warrant the preparation of a Federalism impact statement.

E. National Environmental Policy Act

FEMA's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) at 44 CFR 10.8(d)(2)(ii) categorically exclude the preparation, revision, adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. Moreover, the changes being proposed in this rule constitute actions that enforce existing Federal regulations, (44 CFR 10.8(d)(2)(iv)), and involve emergency and disaster response and recovery activities under section 417 of the Stafford Act (44 CFR 10.8(d)(2)(xix)(K)). This rulemaking will not have a significant effect on the human environment and, therefore, neither an environmental assessment nor an environmental impact statement is required.

F. Paperwork Reduction Act of 1995

In the October 19, 2005 interim rule (at 70 FR 60442; *also* 44 CFR 206.370–206.377), FEMA determined that implementation of the interim rule would be subject to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). With the interim rule, FEMA submitted two information collection requests to OMB for review and clearance in accordance with the review procedures of the PRA. OMB approved the requested revision of the collection entitled ''Application for Community Disaster Loan (CDL) Program and the Special Community Disaster Loan (SCDL) Program,'' which was assigned OMB Control Number 1660–0083 and expires on June 30, 2009. This proposed rule does not contain any changes that would affect that currently approved collection.

OMB also approved the collection entitled ''Application for Community Disaster Loan Cancellation'' which was assigned OMB Control Number 1660–0082 and expires on January 31, 2010. That collection uses FEMA Form 90–5, Application for Loan Cancellation, which has an annual number of respondents of 1 (the number of communities who apply for cancellation of a Community Disaster Loan under the existing procedures in 44 CFR 206.366). It is intended that applicants seeking cancellation of a Special Community Disaster Loan will use the same form submitted for Community Disaster Loans. Because FEMA proposes to implement the same cancellation procedures for Special Community Disaster Loans as already exist for the Community Disaster Loan program, FEMA proposes to amend that existing collection to increase the number of respondents to 153. This number reflects the 1 Community Disaster Loan cancellation application already received annually under the Community Disaster Loan program, and the potential 152 applications for cancellation of Special Community Disaster Loans as proposed in this rule.

Accordingly, in this proposed rule, FEMA is seeking a revision to the already existing collection of information OMB Control Number 1660–0082, to include the cancellation of Special Community Disaster Loans. This proposed rule serves as the 60 day comment period for this proposed change pursuant to 5 CFR 1320.12. FEMA invites the general public to comment on the proposed collection of information.

Collection of Information

Title: Application for Community Disaster Loan Cancellation.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0082.

Form Numbers: FEMA Form 90–5.

Abstract: Local governments may submit an Application for Loan Cancellation through the Governor's Authorized Representative to the FEMA Regional Administrator prior to the expiration date of the loan. FEMA has the authority to cancel repayment of all or part of a Community Disaster Loan or a Special Community Disaster Loan to the extent that a determination is made that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses. Operating budget means actual revenues and expenditures of the local government as published in the official financial statements of the local government.

Affected Public: State, local or tribal governments.

Number of Respondents: 153.

Frequency of Response: 1 per year.

Hour Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 153 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, local and Tribal Government.	Application for Loan Cancellation/FEMA Form 90–5 (under 44 CFR 206.366 as currently approved by OMB).	1	1	1	1	$31.91	$31.91

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, local and Tribal Government.	Application for Loan Cancellation/FEMA Form 90–5 (under 44 CFR 206.376 the change associated with this rule).	152	1	1	152	$31.91	$4,850.32
Total	....	153	....	....	153	....	$4,882.23

Estimated Cost: $0. There are no start-up, operational or other costs associated with this information collection in addition to the burden hour cost noted in the table above.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit written comments on the information collection through one of the methods listed in **ADDRESSES** above on or before June 2, 2009.

FOR FURTHER INFORMATION CONTACT: Contact Gerald Connelly, (202) 646–3638 for additional information regarding this information collection. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMAInformation-Collections@dhs.gov*.

G. Executive Order 12630, Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Executive Order 12988, Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Because no Special Community Disaster Loans were made to Indian Tribal Governments, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rule would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FEMA proposes to amend 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; 119 Stat. 2061; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

2. Revise § 206.370 to read as follows:

§ 206.370 Purpose and scope.

(a) *Purpose.* Sections 206.370 through 206.377 provide procedures for local governments and State and Federal officials concerning the Special Community Disaster Loans program under section 417 of the Stafford Act (42 U.S.C. 5184), the Community Disaster Loan Act of 2005, Public Law 109–88, and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Public Law 109–234.

(b) *Scope.* Sections 206.370 through 206.377 apply only to Special Community Disaster Loans issued under the Community Disaster Loan Act of 2005, Public Law 109–88, and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Public Law 109–234.

3. In § 206.371, revise the last sentence of paragraph (f), paragraph (g) and add new paragraph (h) to read as follows:

§ 206.371 Loan program.

* * * * *

(f) * * * Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Stafford Act.

(g) *Relation to other assistance.* Any Special Community Disaster Loans including cancellations of loans made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance provided under the authority of the Stafford Act or this part.

(h) *Cancellation.* The Assistant Administrator for the Disaster Assistance Directorate shall cancel repayment of all or part of a Special Community Disaster Loan to the extent that he/she determines that revenues of the local government during the 3 fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

4. In § 206.372 revise paragraphs (a), (c), (d) and (e) to read as follows:

§ 206.372 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan or other format specified by FEMA and comply with the assurances on the application, the terms and conditions of the Promissory Note in the application for loan cancellation, if submitted, and §§ 206.370 through 206.377. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the Governor's Authorized Representative (GAR) and the FEMA Regional Office to the FEMA Assistant Administrator for the Disaster Assistance Directorate.

* * * * *

(c) The Regional Administrator or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Assistant Administrator for the Disaster Assistance Directorate. He/she may submit appropriate recommendations to the Assistant Administrator for the Disaster Assistance Directorate.

(d) The Assistant Administrator for the Disaster Assistance Directorate or a designee, shall execute a Promissory Note with the local government and shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Assistant Administrator for the Disaster Assistance Directorate or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Assistant Administrator for the Disaster Assistance Directorate. The Assistant Administrator for the Disaster Assistance Directorate or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

* * * * *

5. In § 206.374, add a sentence at the end of paragraph (b)(2) to read as follows:

§ 206.374 Loan application.

* * * * *

(b) * * *

(2) * * * For loan cancellation purposes, FEMA interprets the term ''operating budget'' to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

* * * * *

6. Add § 206.376 to read as follows:

§ 206.376 Loan cancellation.

(a) *General.* (1) FEMA shall cancel repayment of all or part of a Special Community Disaster Loan to the extent that the Assistant Administrator for the Disaster Assistance Directorate determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets the term operating budget to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) If the tax and other revenues rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the 3 fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of computing revenues received.

(3) If the local government's fiscal year is changed during the ''full 3 year period following the disaster'' the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.

(4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures which are not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.

(5) It is not the purpose of this loan program to underwrite predisaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.

(6) The provisions of this section apply to all Special Community Disaster loans issued from the dates of enactment of Public Law 109–88 and Public Law 109–234.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purposes of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, including but not limited to police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

(3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursable disaster-related expenses. Examples of such expenses include but are not limited to:

(i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.

(ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.

(iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Public Law 93–234, as amended, and other hazard insurance required under section 311, Public Law 93–288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for Special Community Disaster Loan purposes:

(i) The local government's share for assistance provided under the Stafford Act including flexible funding under section 406(c)(1) of the Act (42 U.S.C. 5172).

(ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.

(iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA–State Agreement for the disaster.

(iv) Expenses incurred by the local government which are reimbursed on the applicant's project application.

(c) *Cancellation application.* A local government which has drawn loan funds from the U.S. Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Administrator prior to the expiration date of the loan.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for the fiscal year of the disaster and the 3 subsequent fiscal years;

(ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.

(iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:

(A) The market value of the tax base (dollars);

(B) The assessment ratio (percent);

(C) The assessed valuation (dollars);

(D) The tax levy rate (mils);

(E) Taxes levied and collected (dollars).

(iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) *Narrative justification.* The application may include a narrative presentation to supplement the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Assistant Administrator for the Disaster Assistance Directorate to consider in rendering a decision on the cancellation request.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, the Assistant Administrator for the Disaster Assistance Directorate or a designee determines that all or part of the Special Community Disaster Loan funds should be canceled, the amount of principal canceled and the related interest will be forgiven. The Assistant Administrator for the Disaster Assistance Directorate, or a designee's determination concerning loan cancellation will specify that any uncancelled principal and related interest must be repaid in accordance with the terms and conditions of the Promissory Note, and that, if repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Chief Financial Officer.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with § 206.377.

(4) *Appeals.* If an Application for Loan Cancellation is disapproved, in whole or in part, by the Assistant Administrator for the Disaster Assistance Directorate or designee, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Assistant Administrator for the Disaster Assistance Directorate or designee on the additional information is final.

7. Amend § 206.377 by revising the first sentence of paragraph (b) introductory text, the last sentence of paragraph (b)(2), paragraph (b)(4) and (c)(2) to read as follows:

§ 206.377 Loan repayment.

* * * * *

(b) *Repayment.* To the extent not otherwise cancelled, loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. * * *

* * * * *

(2) * * * If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

* * * * *

(4) The Assistant Administrator for the Disaster Assistance Directorate may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit.* * *

* * * * *

(c) * * *

* * * * *

(2) The principal amount shall be the original uncancelled principal plus related interest less any payments made.

* * * * *

Dated: March 26, 2009.

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–7286 Filed 4–2–09; 8:45 am]

BILLING CODE 9110–23–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 09–24]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Jurisdictional separations is the process by which incumbent local exchange carriers (incumbent LECs) apportion regulated costs between the intrastate and interstate jurisdictions. In this document, the Commission seeks comment on extending until June 30, 2010 the current freeze of part 36 category relationships and jurisdictional cost allocation factors used in jurisdictional separations, which freeze would otherwise expire on June 30, 2009. Extending the freeze would allow the Commission to provide stability for, and avoid imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive reform of the jurisdictional separations process.

DATES: Comments are due on or before April 17, 2009. Reply comments are due on or before April 24, 2009.

ADDRESSES: You may submit comments, identified by WC Docket No. 80–286, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.