the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. *For that reason, this action:*

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 3, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(354) (i)(E)(9) and (10) and (c)(364)(i)(A)(3) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(354) * * *

(i) * * *

(E) * * *

(9) Rule 4604, "Can and Coil Coating Operations," adopted on September 20, 2007.

(10) Rule 4612, "Motor Vehicle and Mobile Equipment Coating Operations-Phase II," adopted on September 20, 2007.

* * * * *

(364) * * *

(i) * * *

(A) * * *

(3) Rule 4603, "Surface Coating of Metal Parts and Products," adopted on October 16, 2008.

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[FR Doc. 2010–747 Filed 1–15–10; 8:45 am]

BILLING CODE 6560–50–P

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: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is amending its Special Community Disaster Loan Program regulations to establish loan cancellation provisions. The Special Community Disaster Loan Program, and these cancellation provisions, apply to communities in the Gulf Coast region who received Special Community Disaster Loans following Hurricanes Katrina and Rita. The period for new Special Community Disaster Loan eligibility closed at the end of fiscal year 2006. This final rule establishes procedures and requirements for Special Community Disaster Loan recipients to apply for cancellation of their loan as authorized by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. This final rule does not cancel all Special Community Disaster Loans, nor does it apply to loans made under FEMA's Community Disaster Loan program which is governed under separate regulations. This rule also finalizes the 2005 Special Community Disaster Loan Program interim rule.

DATES: This final rule is effective March 22, 2010.

ADDRESSES: Copies of this final rule, the 2005 interim Rule, the 2009 notice of proposed rulemaking, all public comments received, and supplementary information (if any) are available electronically on the Federal eRulemaking Portal at *www.regulations.gov* in Docket ID: FEMA–2005–0051. The regulatory docket is also available for inspection at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

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.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Emergency Management Agency's (FEMA) Community Disaster Loan (CDL) Program for local governments began in 1974. The program provides funding to help communities that, due to a presidentially-declared disaster, have incurred a significant loss in revenue that hinders the community's ability to provide essential municipal services such as public schools, sanitation, fire and police services. The CDL program is governed by regulations at 44 CFR part 206 subpart K. *See* 44 CFR 206.360.

After the catastrophic damage caused by Hurricanes Katrina and Rita in 2005, communities in Louisiana, Texas, Mississippi, and Alabama experienced severely depleted tax bases, but a remaining need to provide essential services such as a police force, medical care, public education, and firefighting. The costs to provide these services are not eligible for funding from FEMA under the Public Assistance Program or any other FEMA grant or assistance program.

Due to the unusual circumstances facing these communities, Congress passed the Community Disaster Loan Act of 2005, Public Law 109–88 (Oct. 7, 2005) (2005 Act). The 2005 Act authorized FEMA to loan up to $1 billion to communities that had sustained revenue losses due to the disaster. Loans that FEMA issued under the 2005 Act are referred to as "Special Community Disaster Loans" (Special CDLs). Special CDLs and FEMA's regulations governing the issuance of Special CDL's, (44 CFR 206.370–206.377), only apply to communities affected by Hurricanes Katrina and Rita.

The eligibility requirements and procedures for Special CDLs provided under the 2005 Act are similar to those of the CDL program. Special CDLs, however, are different in three aspects: (1) The $5 million limit on individual loans found in the CDL program was removed; (2) the Special CDLs could only be used to assist local governments in providing essential service[s]; and (3) the loan cancellation provision of section 417(c)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), which was applicable to CDLs, was not applicable to Special CDLs. On October 18, 2005, FEMA published an interim rule to implement the provisions of the 2005 Act. *See* 70 FR 60443; also 44 CFR 206.370–206.377. The interim rule took immediate effect and only authorized FEMA to approve Special CDLs during fiscal year (FY) 2005 or FY 2006. Accordingly, FEMA is no longer authorized to grant new Special CDLs.

After FEMA published the 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. Special CDLs provided under the 2006 Act included three additional limitations: (1) The maximum loan amount was increased to 50 percent of the applicant's operating budget during the fiscal year of the disaster (FY 2005); (2) the loan analysis could only consider "tax revenue" losses and not "other revenues" as permitted in the 2005 Act; and (3) applicants were required to demonstrate actual loss in tax revenues of 25 percent or greater. Like the 2005 Act, the 2006 Act also specifically stated that the loan cancellation provision of section 417(c)(1) of the Stafford Act did not apply. Under the authority of the 2005 and 2006 Acts, FEMA approved 152 Special CDLs, totaling $1,270,501,241, to 109 eligible applicants in Mississippi and Louisiana.

On May 25, 2007, Congress passed The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28, section 4502(a), Public Law 110–28, section 4502(a), 119 Stat. 2061 (2007 Act). The 2007 Act provided FEMA the discretionary authority to cancel Special CDLs, but that authority is limited by the language in section 417(c)(1) of the Stafford Act. *See* 42 U.S.C. 5184. FEMA's discretionary authority to cancel Special CDLs is identical to the agency's authority to cancel loans issued under the CDL program. FEMA's procedures and criteria for cancellation of CDLs are set forth at 44 CFR 206.366. FEMA has found these provisions to be successful in providing the information necessary to determine whether cancellation of a CDL is appropriate. FEMA similarly has determined that these processes and criteria should apply to the process for cancellation of Special CDLs. Therefore, on April 3, 2009, FEMA published a notice of proposed rulemaking that proposed to revise the regulations established in the interim rule to include the same cancellation requirements and procedures for the Special CDL program as FEMA has been using for the CDL program. *See* 74 FR 15228.

Pursuant to FEMA's statutory authority under the 2007 Act, FEMA may cancel "* * * all or any part of [a Special CDL] 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). As required by statute, FEMA's decision must be based on the revenues of the local government during the three-full-fiscal-year period following the major disaster. In the proposed rule, FEMA established that the Federal government's "fiscal year" typically runs from October 1 to September 30, and that FEMA would modify the three-year period to reflect the 36 calendar months following the disaster for governments that operate under a different fiscal year. FEMA also proposed to define the term "operating budget" as actual revenues and expenditures of the local government as published in the official financial statements of the local government.

Furthermore, since the purpose of the Special CDL program is not to underwrite pre-disaster budget or deficits of the local government, FEMA proposed that such deficits carried forward would reduce any amounts otherwise eligible for loan cancellation. Therefore, expenditures would be reduced accordingly for purposes of evaluating any request for loan cancellation if the transfer is from an operating funds account to a capital funds account, or if operating funds are used for other than routine maintenance purposes, or non-disaster related expenditures are increased (except increases due to inflation, the annual operating budget or operating statement). Additionally, FEMA proposed that the tax and other revenue rates or the tax assessment valuation of undamaged property in effect at the time of the disaster would be used without reduction for purposes of computing revenues received.

As the statute authorizes FEMA to cancel "all or any part" of a Special CDL, FEMA proposed to cancel a part of a loan as opposed to the entire loan where the application for cancellation reflects that the applicant's revenues are insufficient to repay the entire loan but sufficient to repay a portion of the loan. If FEMA were to determine that all or a part of an applicant's Special CDL should be cancelled, the proposed rule stated that the amount of principal would be cancelled and the related interest forgiven. FEMA further proposed that the determination concerning loan cancellation would specify that any uncancelled principal and related interest must be repaid according to the terms and conditions of the promissory note; if repayment would constitute a financial hardship, then the local government would be required to submit a repayment schedule to FEMA for review, providing a plan for settling the indebtedness on a timely basis.

FEMA also proposed that, although a loan or cancellation of a loan would not reduce or affect other disaster-related grants or other disaster assistance, FEMA would not approve any Special CDL cancellation that would result in a duplication of benefits to the applicant. Finally, as proposed, if FEMA denies an Application for Loan Cancellation, in whole or in part, the applicant would be allowed to appeal and to submit any additional information in support of the application within 60 days of the date the application is denied. The decision of the Assistant Administrator on appeal would be final.

II. Changes From the Proposed Rule

FEMA made five substantive changes to the regulatory text in response to the 68 comments received by FEMA on the proposed rule. (A discussion of the comments received on the proposed rule, the 2005 interim rule, and FEMA's responses to those comments, is in section IV below.) Further, as a result of these five substantive changes, FEMA redesignated the paragraphs in 44 CFR 206.376 to accommodate the new regulatory text.

First, FEMA has revised 44 CFR 206.376(c)(4) to allow the transfer of ad valorem property tax revenues under certain conditions. The proposed rule contained a restriction that a transfer from an operating fund for debt service (*i.e.,* principal and interest payment on bonded indebtedness, capital leases, or other debt for capital expenditures which is paid for through property tax levies) would be excluded from allowable expenditures in the operating budget calculation. This exclusion was proposed because the use of the loan funds was limited to the provision of essential services, and the regulations clearly prohibited the use of the funds for capital expenses under the regulations. *See* 44 CFR 206.371(f). However, one commenter noted that the loss of tax revenue in non-operating funds will require the reallocation of ad valorem tax resources from operations to debt service and retirement obligation funding. In evaluating this comment, FEMA realized that this type of transfer may be legitimate if required by law. Excluding the transfers from expenditures in the operating budget calculation may result in an operating surplus instead of a deficit (when making a loan cancellation determination) if such transfers were allowed as a legitimate expenditure.

To account for this situation, in this final rule, FEMA has revised 44 CFR 206.376(c)(4) to allow the transfer of ad valorem property tax revenues under certain conditions. If a local government or other entity that received a Special CDL has property tax revenues affected by the disaster, FEMA will consider the impact of the loss of property tax revenue in Debt Service or Pension Funds (non-operating funds) if all of the following conditions are met: (1) The entity experienced a loss of property tax revenue as a result of the disaster and the assessed value during the three years following the disaster, in the aggregate, is less than the pre-disaster assessed value; (2) the entity has a property tax cap limitation on the ability to raise property taxes post-disaster; and (3) the property taxes are levied through the General Operating Fund and transfers for obligations mandated by law are made to fund Debt Service or Pension Obligations which result in the entity experiencing a reduction of property tax revenues in the General Fund. If all three conditions are met, the amount of property taxes that are transferred to other funds for Debt Service or Pension Obligations funding will not be excluded from the calculation of the operating budget or from expenditures in calculation of the operating deficit, to the extent that the property tax revenues in the General Fund are less than the property tax revenues were pre-disaster.

Third, FEMA added definitions for the terms "revenues" and "operating expenses" which were critical, but undefined, terms in the proposed rule. *See* 44 CFR 206.376(b). For cancellation purposes, these definitions will be used to determine if the applicant experienced a deficit during the three full fiscal years following the disaster. For additional guidance, non-governmental applicants may choose to refer to the standards established by the Financial Accounting Standards Board (FASB). Governmental applicants may choose to refer to the general accounting standards established by the Government Accounting Standards Board (GASB) and published by the Government Finance Officers Association (GFOA). The FASB and GASB provide general accounting principles that are not controlled or required by FEMA.

Fourth, the language in the proposed rule at 44 CFR 206.376(d)(4) proposed that the initial review of an application for cancellation was to be conducted by the Assistant Administrator of the Disaster Assistance Directorate or designee. The proposed rule also stated that should the local government seek reconsideration, it could submit additional information in support of the application within 60 days. The reconsideration was to be made by the Assistant Administrator for the Disaster Assistance Directorate. Although, in practice, the Assistant Administrator for the Disaster Assistance Directorate had delegated the initial determination responsibility for CDL cancellation to the Director of the Public Assistance Division, this delegation was not apparent in the proposed regulation. As a result, FEMA received comments requesting that a different person determine the appeal than the person who makes this initial decision. In response to those comments, FEMA revised the regulatory text to specify that the Director of the Public Assistance Division makes the initial determination. Although a revision to the regulatory text will not change FEMA's actual procedure for reviewing and adjudicating appeals of cancellation determinations, in this final rule the language at 44 CFR 206.376 (f) clearly places the initial determination decision with the Director of the Public Assistance Division.

Fifth, FEMA received a comment noting that the proposed rule lacked a timeline for the review and processing of applications for cancellation. The commenter requested a time period in which FEMA will conduct its review and make its initial determination regarding loan cancellation. In response to this request, FEMA revised 44 CFR 206.376(f), to add a new paragraph (f)(1) which provides that once all required and requested information has been provided by the applicant including un-reimbursed disaster related expenses, the Director of the Public Assistance Division will complete the initial evaluation within 60 days.

Finally, FEMA realized that the language of the proposed regulatory text did not align with the language of the preamble of the proposed rule with respect to how the three-fiscal-year period in 44 CFR 206.376(a)(3) is calculated. Compare the proposed 44 CFR 206.376(a)(3) at 74 FR 15235 with 74 FR 15230, bottom of first column. The 36-month period referenced in the proposed regulatory text was intended to prevent communities from revising their fiscal years during the evaluation period to artificially extend their evaluation period beyond the traditional 36-month period of three fiscal years. However, the explanation in the preamble describing how FEMA would calculate the three-full-fiscal-year period did not make it into the proposed regulatory text. The preamble explained that the Federal fiscal year begins on October 1st and for those governments that operate under a different fiscal year, FEMA would modify the three-year period to reflect the 36 calendar months following the disaster. To align the regulatory text with the preamble, language has been added to paragraph 206.376(b)(3) to clarify that at the local government's discretion, the three-fiscal-year period following the disaster is either a 36-month period beginning on September 1, 2005 or the 36 months of the local government's fiscal year as established before the disaster.

III. FEMA's Process for Reviewing Applications

When reviewing the comments received on the proposed rule, FEMA realized that applicants for cancellation would benefit from a concise explanation of the steps FEMA will follow in its internal review process. When reviewing applications, FEMA will review the operating budgets for the three full fiscal years following the disaster. The budgets of the General Fund, Special Revenue Funds of an operating nature, and Enterprise Funds of an operating nature will be reviewed. Revenues from the Special CDL will be excluded from the revenues considered in this analysis. Further, debt service payments and capital expenditures will be excluded from the operating budget calculations per the regulations. Next, revenues will be compared to expenses for all funds noted above to determine if there is an operating deficit. If there is no operating deficit, then loan cancellation will not be approved. If there is an operating deficit for the three full fiscal years following the disaster, then revenue losses will be reviewed. If the revenue losses are great enough to offset the entire amount of the Special CDL, then no further work will be done, and the loan will be canceled and all accrued interest forgiven. If the revenue losses are not enough to offset the loan, then FEMA will review the applicant's unreimbursed disaster-related expenses. If the revenue loss and unreimbursed disaster related expenses do not offset the entire amount of the loan, then any remaining principal that is not offset, and the associated accrued interest will be due at the end of the five-year term of the loan. The amount of the loan that is offset will be canceled, and the related interest forgiven.

For these cancellation procedures to provide the greatest benefit, loan recipients should submit their Application for Loan Cancellation before the expiration date of their loan. This will allow FEMA to cancel all or part of the loan if appropriate, and to forgive all related interest before loan repayment commences. If the loan recipient applies for and is granted cancellation before the expiration date of its Special CDL, then all interest on the amount of the loan that is cancelled would be forgiven regardless of the date that the loan amount was dispersed or the date that loan cancellation is granted.

IV. Discussion of the Public Comments Received

A. The 2005 Interim Rule

FEMA published an interim rule in 2005 which created the Special CDL program. FEMA solicited public comment on those interim regulations and received one comment. The commenter questioned FEMA's determination that recreation districts did not provide "essential services" as provided for in the 2005 Act, and therefore would not be eligible to receive a loan under the 2005 Act. The commenter stated that since recreation districts were considered subdivisions of a State, they should qualify as "essential services."

Upon review of this comment, FEMA re-evaluated the eligibility of recreation districts under the 2005 Act in light of the limited funding available to address priority needs of local governments. The 2005 funds were limited to $1 billion, and all $1 billion was provided to eligible applicants with many of the applicants receiving only a portion of the funds for which they were eligible due to a lack of available funds. In making its award determinations, FEMA prioritized services, finding the needs of a police force, medical care, public education, and firefighting, as examples, to be more "essential" than the services provided by a recreation district. Because there were more than enough applicants who met the eligibility criteria to utilize the complete amount of the limited available funding, FEMA did not grant loans to recreation districts under the 2005 Act. The 2006 Act, on the other hand, provided additional available funds, but the eligibility requirements were more restrictive. Only a small fraction of those eligible for the 2005 Act funds were eligible for the 2006 Act funds. No recreation districts applied for the 2006 Act funds. Had they applied and been eligible for the 2006 Act funds, FEMA would have considered them for funding.

B. The 2009 Notice of Proposed Rulemaking

FEMA published a notice of proposed rulemaking on April 3, 2009 that proposed to revise the interim rule by adding cancellation procedures. *See* 74 FR 15228. The proposed rule also included a proposed Paperwork Reduction Act collection of information. Comments on the proposed rule were due on or before June 2, 2009. FEMA received 68 comments on the proposed rule from a wide and diverse representation of the public affected by the proposed rule. Commenters included members of Congress, States, cities, parishes, public and private non-profit service providers, public and private organizations, utilities, a school board, and individual citizens. The substantive comments received, and FEMA's responses thereto, are as follows:

1. General Comments

Nearly every comment expressed general support for the cancellation of Special CDLs. Commenters see the action as aiding in disaster recovery by reducing the tax burden on the local population. Further, the commenters recognized that relieving this financial burden would increase communities' ability to provide vital services to the communities' residents. Only one commenter opposed the rule. However, the opposing commenter's rationale alleged an improper use of funds for cars, boats and trips in lieu of repairing one's property and referenced disapproval of FEMA's activities related to the housing of individuals for almost four years after the disaster. Based on this rationale, FEMA believes this commenter misconstrued the intent of the proposed rule, which does not provide assistance to individuals and households.

2. Small Business Administration Loans

Twenty-nine comments sought cancellation of Small Business Administration (SBA) loans and/or mortgages for individual homeowners or business owners. These requests are outside the scope of this rulemaking and FEMA's authority. FEMA has forwarded these comments to the SBA.

3. Increase in Market Values

After the disaster, the Gulf region realized severe inflation in costs to maintain a workforce (increased salaries and employee benefits); obtain materials, insurance, and equipment; and house evacuees from other areas. Had the disaster not occurred, these costs would likely not have been incurred to the extent that existed in the post-Katrina environment. One hospital representative commented that they experienced a 695 percent increase in the cost of nursing contract labor in calendar year 2006 as compared to 2005 because of the loss of staff. Five commenters requested that FEMA consider the increased costs of workforce maintenance, obtaining materials, insurance and equipment, and housing evacuees as disaster-related expenses, thereby considering increased expenditures on regular and disaster-related budget items when evaluating loan cancellation.

Although non-disaster related expenses may not be considered, the three-year operating budget used for calculation purposes takes into account any increase in expenditures based upon local labor and other economic conditions. Expenditures will be reviewed for reasonableness and FEMA may request demonstration by the local authority that conditions existed to cause an increase in expenditures above the normal inflation rate as a result of the disaster. As proposed in 44 CFR 206.376(a)(4), increases due to inflation will not be reduced for purposes of evaluating a loan cancellation request. Therefore FEMA will apply disaster-related costs at their actual incurred expense.

Two commenters stated that loan recipients are experiencing post-event needs and incurring non-reimbursable expenses which, while not directly covered by the Stafford Act, are a result of post-effect conditions such as increased homelessness, and law enforcement/code enforcement issues. The commenters recommended that all post-Katrina and Rita expenditures be considered disaster-related under proposed 44 CFR 206.376(a)(4) because of the nature of the disaster and its scope of devastation.

The examples provided by the commenters would be characterized as disaster-related expenses of a municipal operation character, and therefore eligible for consideration. Unless otherwise indicated, all expenditures in the adopted operating budgets will be assumed to be related to carrying out the essential services of the local government, and would therefore be considered disaster-related expenses of a municipal operation character.

One commenter stated that applicants were required to have at least a 25 percent decrease in operating revenues to receive the Special CDL funds, but that operating expenditures were not considered. Another commenter noted that it experienced a growth in some specific revenues, but the growth was strictly attributable to the significant purchases made by its citizens to recover their losses, and the commenter has seen its operating expenditures grow roughly 24 percent. These commenters requested that FEMA take into consideration the gap between a decrease in operating revenues with a limited decrease or even an increase in operating expenditures.

The Special CDL Program was designed to provide loans based upon post-disaster estimated revenue losses, not expenditures. Therefore, the first test for cancellation of a Special CDL is to determine whether there is an operating deficit. If expenditures exceeded revenues during the three-full-fiscal-year period (which would create an operating deficit), then loan cancellation may be possible. If a cumulative three fiscal year operating deficit exists, FEMA will consider revenue losses and/or unreimbursed disaster-related expenditures in determining how much of the loan may be cancelled.

4. Treatment of Property Values

Three commenters were concerned that the proposed rule would create an unnecessary burden on the applicants to determine which properties were or were not physically damaged by the storms. They noted that properties which may not have been physically damaged by the storms may have experienced a drop in property value in revenue evaluation. One city requested an agreement by FEMA that the entire city was damaged or destroyed, and recommended the creation of a threshold for establishing that an entire community has been damaged, rather than going from structure to structure. Another commenter suggested that FEMA not seek to determine if revenue decreases are associated with assessed property value decline related to the disaster, or to general market conditions.

Revenue loss calculations will use actual property taxes collected. *See* 44 CFR 206.374(b)(2). Property tax revenues are considered on an aggregate basis, not an individual property assessment basis, so FEMA expects the impact on the revenues will be properly reflected in the financial statements, based upon actual property tax collection. Furthermore, because property tax revenues are considered on an aggregate basis, applicants will not need to make a property by property determination as feared by the commenters. Finally, unless provided information to the contrary, FEMA will assume that any assessed property value decline during the three full fiscal years after the disaster was related to the disaster, and not to general market conditions, as market conditions themselves were severely affected by the disaster during that period of time.

One commenter alleged that the use of post-disaster reassessment of property values will show a false economic increase to property assessment values. However, if one is using actual tax revenues collected, and applying them to actual expenditures incurred, FEMA does not agree that there would be a false increase. For purposes of determining loan cancellation, FEMA uses actual tax revenues collected, and the actual inability of an applicant to meet its operating budget. The post-disaster reassessment of property values is not used to determine eligibility for cancellation. It is the taxes received based on those revised property values, along with all other revenues, compared to the expenses incurred in the operating budget which then results in either an operating surplus or deficit.

Finally, one commenter stated that some State constitutions provide for the mandatory reappraisal and valuation at least every four years of all property that is subject to taxation. According to the commenter, that reappraisal and valuation requirement is designed to result in local governments receiving the same amount of ad valorem taxes received before the reassessment. The commenter advised that rates are therefore established to yield the same amount of tax revenue collected in the prior year. So, although rates may go down, actual tax revenues may not decrease.

FEMA uses actual tax revenues in making its determination of an operating deficit. FEMA expects the reassessment will have no impact on the calculation of the operating deficit since no revenues will be lost as a result of this process. Regardless of whether the applicant's revenues remained constant, increased, or decreased, if those revenues were insufficient to meet its operating expenses during the three full fiscal years after the event, then the applicant may be eligible for cancellation.

5. Appeals Process

FEMA proposed in the NPRM, 44 CFR 206.376(d)(4), that if the Assistant Administrator of the Disaster Assistance Directorate, or designee disapproved, in whole or in part, an Application for Loan Cancellation, the applicant could submit additional information in support of its application within 60 days of the date of the disapproval notice. The application and any new information would then be considered by the Assistant Administrator for the Disaster Assistance Directorate (Assistant Administrator) on appeal. Any decision made by the Assistant Administrator on the additional information would be final. Four commenters requested that this process be revised so that a different person determines the appeal than the person who makes the initial decision.

In response to these comments, FEMA has revised the regulatory text explaining the appeals process. The proposed language mirrored the CDL cancellation appeal text and said that the Assistant Administrator or designee could make the initial decision. In practice, the Director of the Public Assistance Division has been fulfilling this duty. The Director of the Public Assistance Division therefore makes the initial decision, and the Assistant Administrator reviews the Director of the Public Assistance Division's decision, and any additional information, to make the final agency decision on the request. Although a revision to the regulatory text will not change FEMA's actual procedure for reviewing and adjudicating appeals of cancellation determinations, the revised language at 44 CFR 206.376(f) clearly vests the initial determination decision with the Director of the Public Assistance Division.

6. Extent of Cancellation

The proposed rule explained that the cancellation authority provided to FEMA in the 2007 Act authorized FEMA to cancel all or a part of a Special CDL if a certain threshold is met. Congress did not provide FEMA with the blanket authority to cancel all Special CDLs. Seven commenters, however, requested blanket cancellation. Several noted that it would be the least complicated and most beneficial method; others opined that since FEMA considered it as an alternative in the rule FEMA therefore has implied authority to do so; and another asserted that because of the differences in the funding and eligibility requirements between the CDL and Special CDL programs, there should be a difference in the requirements for cancellation.

FEMA does not have the legal authority to unilaterally cancel all Special CDLs. As some commenters noted, FEMA did consider whether it had the authority to cancel all loans when drafting the proposed rule, but after careful consideration, concluded that it lacks the statutory authority to issue a blanket cancellation. Furthermore, it is not in FEMA's discretion to apply a different threshold for cancellation of Special CDLs than CDLs. The 2007 Act clearly noted that the cancellation provisions of section 417 of the Stafford Act were to apply to the cancellation of Special CDLs. Section 417 of the Stafford Act only allows FEMA to cancel all or a part of a community's loans if "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." *See* 42 U.S.C. 5184(c)(1).

Therefore, when considering requests for cancellation, each loan will be considered on a case-by-case basis. FEMA will cancel all or a part of an applicant's Special CDL based on a review of actual losses and/or increased expenditures, and will cancel all or a part of a Special CDL if that applicant's budget results in an operating deficit.

One commenter noted that if blanket forgiveness is not possible, FEMA should amend the program to offer further deferrals, forgiveness of interest accrual in the meantime, and/or individual consideration for partial forgiveness or further deferral if justified.

FEMA does provide for deferral. If an applicant does not qualify for full or partial cancellation, the remaining debt may be paid over the remaining five-year period in accordance with the terms and conditions of the Promissory Note. *See* 44 CFR 206.376(f). The regulations also provide that if repayment will constitute a financial hardship, the applicant can submit a repayment schedule to FEMA for review. That time schedule would establish the applicant's plan for settling the indebtedness on a timely basis. *See* Id. Further, the term of a Special CDL may be extended by the Assistant Administrator for the Disaster Assistance Directorate, and he or she may defer payments of principal and interest for up to five years. *See* 44 CFR 206.377(b)(1) and (4). If such deferment should occur, however, interest will continue to accrue. *See* 44 CFR 2006.377(b)(4). Also, in unusual circumstances involving financial hardship, the Assistant Administrator for the Disaster Assistance Directorate may also provide an additional period of time, beyond the extension allowed in 44 CFR 206.377(b), to repay the indebtedness. The conditions on this hardship extension are contained in 44 CFR 206.377(c).

Finally, one commenter noted that some communities prudently spread out the use of their eligible loan amounts. As a result, the commenter alleged that forgiveness should be for the total loan amount for which the jurisdiction qualified, regardless of any remaining balances which may be available at the time the application for forgiveness is submitted.

Although FEMA applauds wise financial management by communities, it finds that accommodating the commenter's suggestion would not be wise financial management by the Federal Government. A loan recipient may only use the loaned funds to assist in providing essential services, not to finance capital improvements or the repair or restoration of damaged facilities, or to pay the nonfederal share of any Federal program. *See* 44 CFR 206.371(f). To ensure that the level and frequency of periodic payments are justified, and to ensure that funds are appropriately received and disbursed, all loan recipients must show a need and must establish necessary accounting records before they may draw down funds. *See* 44 CFR 206.375. As communities continue to recover, at some point they are not going to be able to show a need to draw down additional funds.

To ensure appropriate management of funds, forgiveness of loans will be based on the amounts qualified for, and actually drawn down, and for which the applicant qualifies for cancellation of the loan under these regulations. Any outstanding principal and interest balance on a Special CDL after the review for cancellation will still be due and payable within the five-year time frame, unless extended by FEMA if requested by the applicant. Cancellation will not prevent a loan recipient from continuing to draw down funds, however. If a loan recipient has unused loan funds available, and they ultimately draw down those funds after the initial cancellation review, a separate cancellation review will be required before the Promissory Note expires (including any extensions provided under the authority of these regulations). If cancellation of those additional funds is not requested, or if FEMA does not deem those additional funds eligible for cancellation, the new loan amount will have to be repaid.

7. Time Period Considered

As previously noted, section 417 of the Stafford Act allows for all or a part of a Special CDL to be canceled if the revenues of the local government "during the three-full-fiscal-year period following the major disaster" are insufficient to meet its operating budget. FEMA received nine comments requesting that FEMA adjust the three-fiscal-year period. *See* 44 CFR 206.371(h).

One commenter requested that the three-year period (or longer) commence after the last FEMA appeal from the disaster is complete or after the last Project Worksheet is closed out, whichever is later. Not only does FEMA lack the legal authority to make the change as requested, but to do so would significantly delay any cancellation determination. The current approach allows loan recipients to more quickly request and receive cancellation of their loans, if they have an operating deficit caused by disaster-related revenue losses or increases in expenditures due to unreimbursed disaster-related expenditures. Disasters often remain open for many years, (*e.g.,* the Northridge Earthquake declaration has been open since January 1994) and it is not expected that the disasters declared as a result of Hurricanes Katrina and Rita will close faster than the norm. Requiring loan recipients to wait the several years for all Project Worksheets to close or all appeals to be resolved would pose an undue hardship on those who seek cancellation of their Special CDL. FEMA believes the three-year period is adequate and, in most cases, will be more favorable to applicants.

Noting the long duration of disasters, one commenter stated that the full economic impact of public assistance work may not be known until the storm is closed out. The commenter advised that their sales tax revenues, which are a part of the General Fund receipts, declined nearly 17 percent this year and are predicted to fall another 10 percent in the coming fiscal year. Although the rule focuses only on the three full fiscal years immediately following the event, the commenter asserted that the effects are only now being felt, in the fourth year, and the commenter predicts that it will worsen in the fifth and possibly sixth year, before a stabilization of revenues is realized. Four commenters asserted that in the initial two years after the storm, sales tax revenues were extraordinarily inflated because of replacement and rebuilding purchases. As sales tax diversions normalize in the coming years, commenters fear future operating deficits that were initially offset by these replacement purchases might ensue. Further, several commenters suggested a six-year or simply "longer" evaluation period be considered. Another commenter sought a longer evaluation period while allowing for immediate application for cancellation for those local governments who can document adequate revenue shortfalls at this time.

If sales tax revenues are declining as significantly as suggested, it is likely that an operating deficit occurred within the three-year period, which will result in an evaluation of all revenue losses and a review of unreimbursed disaster-related expenditures, if applicable. Even if FEMA had the legal authority to extend the period, which it does not, the longer it is extended, the greater the likelihood that the loss would be unrelated to the disaster (*e.g.,* due to the nationwide economic downturn).

Similarly, one commenter noted that some states' ad valorem taxes are paid in arrears, meaning that tax revenues may not have been impacted in 2005 or 2006, but may have reduced significantly in 2007 and following. The commenter found three years to be insufficient. Although FEMA recognizes the impact that the ad valorem tax structure of some states could put them at a disadvantage, FEMA has attempted to apply as liberal an interpretation of its statutory authority as possible, and determined that it does not have the authority to shift the three-year period. The statutory language states "during the three full fiscal year period following the major disaster." *See* 42 U.S.C. 5184(c)(1). The language of the statute explicitly requires FEMA to consider only the three full fiscal years immediately after the major disaster, therefore FEMA cannot revise the regulation in response to this comment.

Two commenters asserted that because of the difference in applicants' fiscal years, some may be at a disadvantage if FEMA automatically applies a 36-month period for calculating the three full fiscal years. As an example, one commenter's fiscal year is from July 1 to June 30, so the commenter asserted that their review period would commence July 1, 2006; 10 months after the disaster. The commenters expressed concern that at that point some improvement in financial conditions should have already occurred beyond the conditions that existed immediately after the disaster. The commenters requested that an applicant be given the option of basing its cancellation request upon its fiscal year or a 36-month period commencing on the first full month after the disaster.

In reviewing the proposed rule in light of this comment, FEMA realized that the proposed language of the regulatory text does not align with the language in the preamble of the proposed rule. Compare proposed 44 CFR 206.376(a)(3) at 74 FR 15235 with 74 FR 15230, bottom of first column. The 36-month period referenced in the proposed regulatory text was intended to prevent applicants from revising their fiscal years during the evaluation period to artificially extend their evaluation period beyond the traditional 36-month period of three fiscal years. However, the explanation in the preamble describing how FEMA would calculate the three-full-fiscal-year period did not make it into the proposed regulatory text. The preamble explained that the Federal fiscal year begins on October 1st and for those applicants that operate under a different fiscal year, FEMA would modify the three-year period to reflect the 36 calendar months following the disaster. Since Hurricane Katrina made landfall on August 29, 2005, allowing a 36-month period to begin immediately thereafter would place the beginning of the calculation on September 1, 2005.

Both of these commenters noted that allowing applicants to start with September 1, 2005, instead of their fiscal year start, would ensure that the extraordinary expenses and lost revenue incurred immediately after the event are fully taken into consideration. The regulatory text that would implement this change, however, was unintentionally omitted from the proposed rule. As a result, language has been added to paragraph 206.376(b)(3) to clarify that at the local government's discretion, the three-fiscal-year period following the disaster is either a 36-month period beginning on September 1, 2005, or the 36 months of the local government's fiscal year as established before the disaster. Should applicants elect the 36-month period beginning September 1, 2005, FEMA will prorate the revenues and expenses for the partial years. For example, if a city's fiscal year runs from January 1 through December 31, FEMA will apply one third of the city's fiscal year 2005 budget, all of its fiscal years 2006 and 2007 budgets, and two thirds of its fiscal year 2008 budget.

8. Rules for Cancellation—General

Three commenters requested that FEMA align the accounting methods for the consideration of revenues and expenditures for the purpose of loan cancellation with the accounting methods for loan eligibility to reduce subjective interpretations during the evaluation process and prevent any extreme changes in FEMA determinations.

FEMA will apply the same accounting methods in its review of applications for cancellation of Special CDLs as it applied to applications for the loans themselves. To provide clarity, in this final rule FEMA added definitions for the terms "revenues" and "operating expenses" to 44 CFR 206.376(b). In addition, for further guidance, non-governmental applicants may choose to refer to the standards established by the FASB and governmental applicants may choose to refer to the general accounting standards established by the GASB. These standards boards provide general accounting principles that are not controlled or required by FEMA.

Although FEMA will apply the same accounting methods, it will not apply the same criteria to applications for cancellation as applied to loan applications. This is because unlike the application stage where estimates are made because actual future budget data are not available, actual expenditures are known during the cancellation stage. The actual expenditure data provide a much more accurate presentation of a community's budget than estimates.

Further, FEMA is unable to use the same criteria for eligibility for the loan, as the criteria established by statute were not the same for all Special CDLs. To qualify for the Special CDLs issued under the authority of the 2005 Act, applicants were required to demonstrate that they had suffered substantial loss (*i.e.,* 5 percent) of tax and other revenues, whereas the 2006 Act further defined "substantial" by requiring at least a 25 percent loss of only tax revenues. The Special CDL issuance criteria also differed. The 2005 Act established loan amounts based upon the lesser of 25 percent of the operating budget, or the projected revenue loss and unreimbursed disaster-related expense. The Special CDLs issued under the 2006 Act, however, established loan amounts at 50 percent of the operating budget.

Just showing a loss, however, does not prove that a local government's revenues are insufficient to meet its operating budget as required by section 417 of the Stafford Act. To make this determination, the cancellation reviewer will first determine if there is an operating deficit, regardless of the projected revenue losses at the time the Special CDL was issued. The accounting procedures for cancellation use the same governmental accounting principles, but the calculation of the operating deficit is expanded to include all revenue sources affected by the disaster so that the full picture of the financial condition of the local government is considered. This computation may result in revenue losses being realized that are greater than what was initially projected at the time of loan application. Reviewing all revenues affected by the disaster is expected to generally favor the applicant during the loan cancellation review process.

Two commenters were in favor of the rule as proposed and encouraged FEMA to provide equal treatment to the Gulf Coast communities and forgive Special CDLs under the same rules as CDLs are forgiven in other States for other storms. Three commenters, however, recommended that FEMA create new, different regulatory requirements for cancellation of Special CDLs because of the special circumstances related to this disaster. One of those commenters asserted that Special CDLs are not contemplated under section 417(c)(1) of the Stafford Act, so FEMA has the discretion to choose other methods for cancellation. All three commenters asserted that new, more flexible regulatory requirements should be established that maximize the possibility for cancellation for each individual recipient.

FEMA agrees that it should be as flexible and least restrictive as possible when establishing the procedures for cancellation. However, contrary to the one commenter's assertion, the 2007 Act explicitly ordered FEMA to apply section 417 of the Stafford Act when considering Special CDLs for cancellation. *See* 42 U.S.C. 5184. Therefore, the underlying statutory requirement that FEMA only forgive all or a part of those loans if, during the three-full-fiscal-year period following the event, revenues of the local government are insufficient to meet its operating budget, applies. The Special CDL program was created to assist communities in providing essential functions to their residents. Therefore, forgiveness should not be provided because a community would be inconvenienced by the requirement to repay the debt, but because it actually cannot do so and continue to provide those essential functions. This need is apparent when a community's revenues are insufficient to meet its operating budget.

As discussed throughout this preamble, FEMA has attempted to broadly construe its statutory authority and provide as much flexibility in the process as possible. However, FEMA has been using the existing procedures for CDL cancellation since 1990, and has found them to be an efficient and accurate method of determining when revenues of a local government are insufficient to meet its operating budget. These procedures were successfully applied after other major hurricanes, including but not limited to hurricanes Andrew (1992) and Marilyn (1995).

Since each jurisdiction was not equally impacted by hurricanes Katrina and Rita, each loan cancellation application should be considered on its own merits. To ensure fairness, each applicant's request for cancellation will be reviewed individually to determine if the loan may be cancelled. Since each application for cancellation is considered individually, the evidence for cancellation eligibility will be unique to each applicant. If the magnitude of damage resulting from hurricanes Katrina and Rita resulted in a cumulative operating deficit during the three-full-fiscal-year period following the disaster, then Special CDL applicants will receive loan forgiveness based upon the revenues actually lost, up to the amount of the loan. If the revenue loss is not sufficient to cancel the entire loan, then FEMA will consider unreimbursed disaster-related expenses to offset the loan. If, after considering both revenue losses and unreimbursed disaster-related expenses, the entire loan is not cancelled, any remaining principal that was not cancelled along with associated accrued interest must be repaid at the end of the loan term, including any extensions, if approved.

One commenter asserted that FEMA should apply all expenses of the applicant in its evaluation, and not assess whether the expense is disaster-related. The commenter explained that all expenditures were made in accordance with local and state law governing the use of public funds, thus they were necessary and appropriate to meet the needs of the citizenry and/or constituents of the local government. While that may be true, the purpose of the Special CDL was to help local governments recover from losses associated with Hurricanes Katrina and Rita. Therefore, any losses due to an increase in expenditures must also be related to Hurricanes Katrina or Rita.

Three commenters suggested that FEMA provide cancellation in those situations where a cumulative operating deficit is not realized, or consider the operating deficit as a secondary criterion if an applicant's cumulative post-disaster revenue shortfall is less than the outstanding balance of the loan. One commenter encouraged FEMA to compare pre-storm revenue projections to post storm actual revenues as the primary criteria for determining eligibility for partial or complete cancellation. In particular, the commenter requested that FEMA use the schedule of historic and projected revenues provided by loan recipients when they applied for the Special CDL.

FEMA's statutory authority only allows loans to be canceled if the local government's revenues are insufficient to meet its operating budget. *See* 42 U.S.C. 5184(c)(1). When actual operating revenues are not sufficient to meet actual operating expenditures, an operating deficit occurs. Therefore, for FEMA to cancel a loan, the applicant must first have an operating deficit. FEMA does not have the authority to waive this requirement.

If a local government has the financial ability to maintain its operating budget, the surplus should go to repay its debts. To the extent possible, Federal funds which were provided with the expectation of repayment should be repaid if the borrower has the assets available to repay them. Further, projected revenues versus actual revenues should not be used in lieu of actual revenues applied to actual costs because the latter provides a more accurate representation of an applicant's true financial status. The purpose of cancellation is to assist those communities that, due to the disaster, have incurred a revenue loss of such a magnitude that they no longer have sufficient funds to operate. These loans were provided to ensure that essential services would continue to be provided in the aftermath of the disaster. Therefore, cancellation should be provided when repayment of the debt would cause the community to no longer have the budget available to provide these essential services; not simply to provide a replacement for lost revenue.

Finally, one commenter was concerned that any increase in expenditures for the Special CDL recipients will be benchmarked to pre-Katrina levels. However, FEMA already reviewed the pre-Katrina operating budgets at the time the loan was made. When considering applications for cancellation, FEMA will review post-Katrina budgets for reasonableness but will assume that any costs in the operating budget are disaster-related unless otherwise noted.

9. Today's Economy

Four commenters noted that loan recipients are now finding themselves in a deep recession, although 2009 figures will not be considered for cancellation. They stated that a three-year qualifying snapshot as outlined in the proposed rule might unfairly disqualify certain loan recipients for loan cancellation. Another commenter asserted that requiring loan recipients to repay is in direct conflict with what President Obama and Congress are trying to accomplish with the economic stimulus package. Finally, another commenter urged FEMA to consider the effectiveness of simultaneously collecting Special CDL repayments from recovering communities and distributing funds appropriated by the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5) to the same communities. The commenter encouraged FEMA to consider forgiveness as a component of the Nation's economic recovery effort.

The Special CDL Program was established to help communities affected by Hurricanes Katrina and Rita recover from revenue losses due to the disaster, not revenue losses for any other reason. The operating deficit and revenue loss/increased expenditures must be related to Hurricanes Katrina or Rita as required by 44 CFR 206.371(h). Further, unlike the ARRA, the Special CDL program was designed to replace lost revenues to continue essential services of an operating character, not provide capital funding for public works projects. The ARRA stimulus funding is provided for different reasons under separate authority, and is generally used for capital projects, which are not eligible costs under the Special CDL program. Therefore, these comments are outside the scope of this rulemaking.

10. Documentation for Consideration

The proposed rule in 44 CFR 206.376(c), set out specific documents and data that are to be submitted in a community's Application for Loan Cancellation. Four commenters encouraged FEMA to allow for the submittal of additional documentation, above and beyond what is required by regulation, to support an application for loan forgiveness. One commenter specifically cited the GAO report: "Hurricane Katrina: Trends in Operating Results of Five Hospitals in New Orleans Before and After Hurricane Katrina." One commenter mentioned the value of original revenue projections, and said that FEMA should allow applicants to file this information with the application, not only during an appeal. Another argued that the rule should not limit information source documents to the publicly available financial statements of the local government. That commenter asserted that all sources of data should be considered in the local government's application for cancellation as there is a great deal of variation among the local governments.

Applicants may submit any supporting documentation they believe supports an operating deficit, a disaster-related loss in revenue, or an increase in disaster-related unreimbursed expenditures. Furthermore, the application may include a narrative presentation to supplement the financial material accompanying the application and to present any extenuating circumstances for FEMA's consideration. *See* 44 CFR 206.376(e)(2). However, FEMA suggests that applicants not submit additional supporting documentation, outside of that required initially by FEMA, until they are notified by FEMA that they do not qualify for cancellation of all or part of the loan. Such notification is provided to each applicant in writing after FEMA has reviewed the financial statements, budgets, revenues, and if applicable, the unreimbursed disaster-related expenditures of the applicant; and made a determination that they do or do not qualify for cancellation under the regulations. If the applicant wishes to appeal that decision, additional supporting documentation may be submitted to FEMA at that time.

With respect to the audited financial statements and operating budgets of the local government, these are used because they will reflect the financial condition of the local government and its ability to repay the loan. Should a community choose to do so, it may submit other underlying documentation to support the information in the audited financial statements, provided it can be tracked into the financial system that was audited.

11. Use of Official Financial Statements

Six commenters were concerned with FEMA's use of official financial statements. One was concerned that "additional disaster-related expenses of a municipal operation character" might not be reflected in official financial statements. Another was concerned that using official financial statements instead of actual cash expenditures might overstate the actual financial health of an applicant in the aftermath of a disaster.

Assuming the entity accounts for all expenditures through their accounting system, the official financial statements reflect the financial health of the applicant in accordance with generally accepted accounting principles; therefore their use is most appropriate. All expenses of an applicant should be included in the official financial statements. Although details of unreimbursed disaster-related expenditures may not be reflected in the official financial statements, specifically, FEMA will ask applicants to identify such detailed information in the accounting system that may be eligible for consideration during the Special CDL cancellation process.

When making cancellation determinations, three commenters urged FEMA to also consider the revenue projections and other materials that were reviewed and accepted during the loan application process (5 year budgets, etc.), to take into account the overall loss of revenues that the applicant incurred as a result of the hurricanes.

Although FEMA based eligibility for the Special CDLs on revenue projections, it did so only because actual data were not available. Now that the statutorily-mandated three-fiscal-year period has passed, actual data exist. The official financial statements show the actual operating results, which will show whether or not the applicant actually experienced a loss of revenues and incurred an operating deficit. Because FEMA is limited to evaluating the data from the three full fiscal years after the disaster, projected data for that period would be less accurate and the consideration of projected data for a period thereafter is outside the scope of the authority provided in section 417 of the Stafford Act. Further, revenue losses as a result of the hurricane are part of the basis for determining an operating deficit. It is possible that other revenues not affected by the hurricane could offset the losses of revenues affected by the disaster, but if that were true, then there would be no operating deficit unless expenditures increased dramatically and the applicant had unreimbursed disaster-related expenses great enough to offset the loan. Therefore, FEMA made no change to this final rule based on the commenter's request.

One commenter noted that some cities are required by their state constitution to have a balanced budget. The commenter advised that this may have resulted in loan recipients reducing expenditures to match their decreased revenues. FEMA's acceptance of actual financial statements without a review of reduced expenditures that were made to match revenues would, the commenter stated, result in a distorted picture of the financial condition of the applicant. To remedy this, the commenter recommended that expenditures have a component of expenses not incurred, and therefore services not provided, as a result of the reduced revenues.

The Special CDL program was intended to provide loans that would replace estimated lost revenues as a result of the disaster. The loan proceeds were to be used to provide essential services that could otherwise not be provided due to the loss of those revenues. It would be difficult, if not impossible, for FEMA to determine which expenses, if any, were not incurred or services not provided as a result of the disaster, as the decision to fund services are made by the local authorities. In addition, the constitutional requirements for a balanced budget of state or local governments and the allocation of resources at the local level are outside the authority of FEMA. In calculating the operating budget, FEMA excludes the Special CDL proceeds which may create an operating deficit for many applicants that otherwise may not show an operating deficit in their own financial statements.

One commenter noted that some applicants may be required to prepare their budgets on a cash basis, so the budget-to-actual comparisons in the official financial statements are presented on a cash basis, the fund financial statements presented on a modified accrual basis and the government-wide financial statements prepared on a full accrual basis. In calculating the cumulative operating deficit from the official financial statements of the local government, the commenter asked, whether the applicant should begin with the statement of activities in the government-wide financial statements or the statement of revenues, expenditures, and changes in fund balance in the fund financial statements or the statement of revenues, expenditures, and changes in fund balances—budget and actual.

The operating budget used in the loan cancellation calculation is based upon the required supplementary budget schedules for all operating funds with revenues affected by the disaster, contained in the Comprehensive Annual Financial Report (CAFR). The operating budget schedules will be adjusted to exclude capital expenditures, debt service payments, or capital lease payments for equipment or buildings for purposes of calculating the operating budget at the time of cancellation review. Use of the statement of revenues, expenditures, and fund balance-budget and actuals may include funds which are of a non-operating nature. Such funds would not qualify for use of the Special CDL proceeds, and therefore, should not be used as the basis for Special CDL cancellation.

12. Documentation Required

One commenter stated that in the initial months after the storm, cities faced many challenges and in many cases did not track "un-reimbursed expenses", which may include, for example, police protection to FEMA trailer parks. Because of this, the commenter requested that FEMA consider expenses without supporting documentation.

If an applicant needs to identify unreimbursed disaster-related expenditures in order to cancel more of the loan, FEMA will work with the applicant to develop methods to identify and calculate unreimbursed disaster-related expenditures. However, without documentation, FEMA will not consider such undocumented unreimbursed disaster-related expenses for purposes of loan cancellation. FEMA applies the requirements of Office of Management and Budget (OMB) Circular A–129 "Policies for Federal Credit Programs and Non-Tax Receivables" to the management of its loan programs. OMB Circular A–129 is available electronically at *http://www.whitehouse.gov/omb/rewrite/circulars/a129/a129rev.html.* Although OMB Circular A–129 does not specifically address the unusual circumstance of the cancellation of Federal loans, it does require Federal Departments (including the Department of Homeland Security, of which FEMA is a component) to "follow sound financial practices in the design and administration of their credit programs," and loan documentation is required for the extension of credit. *See* OMB Circular A–129, Appendix A, paragraphs II.2 and III.A.2. Further, FEMA and government-wide regulations such as those at 44 CFR Part 13 and 2 CFR Part 215 require cost documentation to support reimbursement of funds in its grant programs, including documentation to support reimbursement of costs incurred for the response to and recovery from hurricanes Katrina and Rita under the Public Assistance program. Requiring the documentation of costs and revenues to justify the cancellation of a loan is a sound financial practice, is consistent with management of other programs, and is not changed in this final rule.

13. Definition of "Revenues"

The proposed rule contained no definitions for the terms "revenues" or "operating expenses." Two commenters sought definitions for these terms, and further, requested that FEMA define these terms to have the meaning ascribed to them by the GASB and as discussed in the "Blue Book" by the GFOA except to the extent expressly modified in these regulations. Another commenter stated that the proposed rule focused only on property assessments and related taxes; the commenter encouraged FEMA to allow revenues from all sources, including sales taxes and in some cases, the relationship between local revenues and state revenues.

The individual comment highlighted the need for the definitions sought by the other two commenters. All sources of revenues will be considered in FEMA's cancellation calculation procedures, provided the entity has a cumulative operating deficit. To ensure applicants and FEMA apply consistent professional standards and common terminology to these words, the regulation has been revised to add definitions for these terms at 44 CFR 206.376(b). These definitions align with the usage of those terms by the GASB and GFOA.

Three commenters requested that one-time funds such as grants, awards, waivers, settlements and insurance proceeds, which are non-recurring, not be considered revenue when FEMA reviews a community's budget for loan cancellation. These one-time income surges, the commenters asserted, could overstate the run-rate of revenues to the local government.

Revenue calculations for cancellation review will use actual post-disaster revenue minus actual post-disaster expenditures to determine if an operating deficit exists. Federal grants, for example, received to fund operating programs are offset by expenditures for those grants, and should have no impact on the operating deficit. Grants and other one-time revenues received by the community that are not related to the Special CDL program, will be included if they represent revenues sought by the government and received to offset expenses of an operating character. Insurance proceeds directly related to the disaster must be included as revenue if they are reimbursing expenses of an operating character, or disaster-related expenses. Special CDL proceeds, however, will be excluded. By matching such revenues against operating expenses, FEMA expects the net effect will have no impact on the operating deficit.

Another commenter requested that FEMA clarify the term "revenues" to include revenues from traditional sources existing before the disaster. The commenter provided the example of a prison facility whose closing resulted in the loss of revenue to a sheriff and tax collector's office, and requested that revenues after the disaster be compared to revenues before the disaster, including the consideration of the loss of its traditional revenue sources.

In response to this comment, FEMA added a definition of the term "revenue" in 44 CFR 206.376(b)(2). During the cancellation review process, all revenues during the three-full-fiscal-year period will be reviewed, including those from traditional sources existing before the disaster. These actual revenues will be compared to the actual expenditures during that period to determine eligibility for cancellation.

Two commenters noted that many loan recipients have pledged their revenues as the security for bonds. They encouraged FEMA to exclude from "revenues" those that are received by a local government, but are not available for the payment of operating expenses by law or contract.

Any revenues that are dedicated to non-operating expenditures, such as debt service or capital expenditures are excluded on both the revenue and expenditure side of the budget calculation to determine the net eligible operating budget. As for whether the entity has these funds available for the repayment of the loan, each entity knew of commitments of operating revenues that were pledged at the time the loan was made. Further, each applicant signed a collateral security agreement at the time it was granted the Special CDL, pledging future revenues to be used to repay the loan, if necessary.

Two commenters requested that FEMA consider pre-disaster budgets and/or financial statements to determine base revenue and expenditure levels for comparison against post-disaster levels to establish a more realistic and accurate shortfall. Although FEMA does consider the pre-disaster budgets and financial statements in base revenues at the time the loan is made, the shortfall, if any, must be from actual revenues lost.

One commenter requested that the "revenues" included in the "operating budget" submitted for cancellation consideration be adjusted to remove any increased tax revenues resulting from a voluntary increase in millage rates or other fees (ex: An airport's airline fees) during the applicable three-full-fiscal-year period following the disaster. FEMA uses actual tax and other revenues received during the three-full-fiscal-year period in calculating the operating deficit and ultimately possible cancellation of the Special CDL. Further, property tax revenues are considered in the aggregate for purposes of calculating the cumulative three-year operating deficit. To ensure an accurate review of the entity's ability to meet its operating budget, if the local government increases taxes or adds new fees or raises existing fees, the actual revenues received during the three-full-fiscal-year period following the disaster will be included in the loan cancellation calculation of operating revenues.

Finally, one commenter asked if the terminal and landing fees of a regional airport will have an impact on the forgiveness of its loan. If the regional airport qualified for a Special CDL, those revenues will be considered in the calculation for cancellation. If the regional airport was part of a larger governmental entity and treated as an enterprise fund, the impact fees will still be considered. The impact on the loan forgiveness will be determined by whether or not there is (1) a cumulative operating deficit; (2) whether there was a loss of revenues during the three-year period; and (3) if there are any unreimbursed disaster-related expenditures which offset all or part of the loan.

14. Definition of "Disaster-Related Expenses"

In the proposed rule at 44 CFR 206.376(b)(1), FEMA defined disaster-related expenses of a municipal operation character as those expenses 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." Because of the insertion of new definitions at new (b), and the expansion of the regulatory text on revenue calculation procedures in new (c), the subparagraph on disaster-related expenses was re-designated to 44 CFR 206.376(d) The redesignation is not a substantive change.

Several commenters sought revisions to this definition to include additional expenditures. Two commenters sought to include expenditures associated with debt service. One of those commenters stated that operating losses incurred because of Hurricane Katrina caused it to default on its debt covenant compliance. As a result, its covenant compliance threshold was increased; it was required to engage consultants to conduct a review of operations and make recommendations to improve operations; and was required to file a mortgage on all of the entity's equipment and properties. Another commenter requested that FEMA revise the definition of expenses not only to include debt service, but also major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intra-governmental services, special assessments, trust and agency fund operations.

Another commenter urged FEMA to also consider the following expenses when evaluating an application for cancellation: The cost of maintaining a workforce, the cost of drainage work and the replacement of streets and roadways for which communities had to borrow or use their own funds, code enforcement expenditures (additional staffing, legal costs, and demolitions needed to accommodate the code enforcement department), insurance expenses, and finally legal and consultant fees incurred to deal with FEMA appeals and FEMA paperwork processing. Two other commenters inquired as to the eligibility of legal fees, asserting that such fees are not eligible for reimbursement under project applications or any other Federal program.

For the reasons explained below, FEMA made no changes to the disaster-related expenses at 44 CFR 206.376(d) based on these comments. Labor costs for code enforcement and insurance expense increases due to the disaster are reflected in an applicant's post-disaster operating budgets and actual expenditures. The Special CDL program is intended to cover expenses of an operating nature in the budget. Therefore, capital expenditures for drainage work and street repairs are ineligible uses for Special CDL funds but may be eligible for reimbursement under another Federal program. Debt service is also generally incurred for capital expenditures. Although debt service is not considered an operating expense which provides essential government services, if the applicant can demonstrate that the debt service is related to debt assumed to cover normal operating expenditures, then the applicant may include the related interest on the debt as an unreimbursed disaster-related expenditure. Debt service used for capital expenditures, however, is not eligible for consideration.

Major repairs, rebuilding, replacement or reconstruction of public facilities damaged by the disaster are likely to be eligible under the Public Assistance program, which is a FEMA grant program separate from the Special CDL program. Eligible applicants should have applied for and received grant funds to reimburse these costs under the Public Assistance program. Intra-governmental services, (*i.e.,* an Internal Service Fund such as a Fleet Maintenance Fund or Central Purchasing Services), of an operating character were eligible for consideration in the original loan application and will be included in the subsequent review for loan cancellation. *See* 44 CFR 206.376(d)(2).

With respect to legal fees, if the expenditure is disaster-related, and not reimbursable through any other Federal or State program, or not covered by insurance, FEMA may consider such expense as an unreimbursed disaster-related expenditure. If the attorneys' fees are incurred as a regular operating expenditure, the attorneys' fees will be included in the operating budget and will be part of the calculation of an operating deficit or surplus.

Disaster-related expenses that are not reimbursed through any other program will be included to determine if the entity incurred an operating deficit for the three-full-fiscal-year period following the disaster. If revenue losses are insufficient to offset the full amount of the loan at the time of loan cancellation review, unreimbursed disaster-related expenses that are of a municipal operating character as defined in the regulations may be used to offset principal of the loan. If there is any balance of the loan after revenue losses and unreimbursed disaster-related expenses are considered, the remaining balance will remain due in accordance with the terms and conditions of the Promissory Note.

One commenter sought inclusion of the local government's cost share of assistance provided by FEMA under the Stafford Act's Public Assistance program. The Federal cost share for both Louisiana and Mississippi for the disasters declared as a result of Hurricanes Katrina and Rita was adjusted to 100 percent *See* 70 FR 70086 (November 21, 2005) for Louisiana; and 71 FR 41228 (July 20, 2006) and 72 FR 34704 (June 25, 2007) for Mississippi. Therefore there should have been no cost share incurred by the local governments during that time.

Finally, one commenter requested that unfunded needs to basic services be taken into consideration as the reduction in operating budgets after Hurricane Katrina demanded that expected services were cut but still left a void that needed to be filled. The Special CDL program is not intended to supplant the decisions of the local government in determining what constitutes "basic services." However, unless applicants indicate that revenues were lost or expenses increased due to other non-Hurricane Katrina or Rita related factors, FEMA will assume that any operating deficit occurred during the three-year period is related to Hurricanes Katrina or Rita.

15. Definition of "Operating Budget"

For loan application, the "operating budget" is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time and the proposed means of financing the expenditures. *See* 44 CFR 206.374(b)(2). Two commenters recommended that the operating budget consist of a pro forma budget constructed from the revenues of the character and to the extent permitted by law to be used to pay operating expenses and not otherwise required by contract to be used for another purpose, and expenditures actually incurred during the applicable period, together with an adjustment to expenditures (increase) to reflect the level of expenditures required during the applicable period to allow for adequate performance of its governmental functions at the levels reflected in the last full fiscal year before the disaster.

The Special CDL Program was not designed to fund estimated expenditures, but rather the loan amounts were based on estimated lost revenues, established by historical data three years prior to the disaster and a projection of lost revenues three years after the disaster. Any revenues that are dedicated to non-operating expenditures, such as debt service or capital expenditures are excluded on both the revenue and expenditure side of the budget calculation to determine the net eligible operating budget. As for repayment of the loan, each loan recipient knew of commitments of operating revenues that were pledged at the time the loan was made. Further, each applicant signed a collateral security agreement pledging future revenues to be used to repay the loan, if necessary.

Another commenter noted that some revenue streams may be dedicated to specific purposes by the taxpayers and may not be spent in other areas. As a result, revenue growth in one area cannot be used to supplement losses in other areas. The commenter encouraged FEMA to take this into account when reviewing applications for cancellation. Another commenter requested that FEMA allow a cancelled debt requirement to substitute for lost revenues that will never be replaced.

Any revenues that are dedicated to non-operating expenditures, such as debt service or capital expenditures are excluded on both the revenue and expenditure side of the budget calculation to determine the net eligible operating budget, so FEMA expects there will be no effect on the calculation of the operating deficit. However, if the debt service or pension payments are mandated by law and the entity has a property tax cap limitation by law, FEMA has modified the regulations to review that situation and its impact on the calculation of the operating deficit. *See* 44 CFR 206.376(c)(4)(ii). Debt payments, whether cancelled or paid, are not included in the operating budget calculation.

One commenter asserted that FEMA's interpretation of the term "operating budget" basically eliminates most, if not all, local governments from consideration for any sort of loan cancellation because, unlike the Federal Government, local governments are prohibited by law from operating at a deficit. The commenter stated that they reduce expenditures to the extent of incoming revenues regardless of pre-disaster revenue levels or the revenue amounts budgeted at the time of the disaster.

The purpose of cancellation is to assist those communities that have incurred a loss due to the disaster to ensure that they can continue providing essential services; that loss must first be evident in an operating deficit. FEMA understands that some states require balanced budgets, but that issue is outside the scope of FEMA's authority with regard to loan cancellation. In calculating the operating budget FEMA excludes the Special CDL itself, which may result in an operating deficit for many communities who otherwise were required by law to have a balanced budget, if other revenues were not adopted to cover either the loss of revenues or increased expenditures as a result of the disaster.

Another commenter advised that before the disaster, cities had planned for infrastructure repair and improvement projects that were put on hold. The commenter noted that in the mean-time these projects have been continually deteriorating, and the costs to complete the work have increased. In addition, the number of households decreased, resulting in lower annual revenues, while the amount of waste produced per consumer has increased, causing an additional strain on the budget. The commenter requested that FEMA focus on cash flow, as opposed to a supposed surplus indicated on the city's published financial statements. One commenter stated that operating budgets and audits (which are generally modified accrual audits) may not show the unfunded and deferred maintenance issues communities continue to struggle with as a result of Hurricane Katrina. Another commenter simply requested that FEMA consider expenditures that were deferred by local governments because money was not available.

The Special CDL program is not intended to provide funding for unfunded or deferred maintenance issues, but rather to replace lost revenues as a result of the disaster. Capital expenditures have traditionally been excluded costs for the CDL program. The Special CDL program was created to assist those who demonstrated a need for Federal financial assistance to provide essential services. Because capital projects are not part of the Special CDL program, the impact of deferring projects is unrelated, and the timing and funding of projects is a local decision outside the scope of FEMA's authority. The official financial statements should reflect all costs of the entity. The operating budget used in the calculation is the required supplementary budget schedule, excluding capital expenditures, debt service payments, or capital lease payments for equipment or buildings.

Finally, one commenter advised that accounting adjustments required by the advent of GASB 34 are on the full accrual basis, but one of the major distortions created by the entity-wide accrual basis is that capital projects are not expensed, but cost is allocated over time. The commenter sought clarification that the term "operating budget as shown on our published financial statements" means the Budgetary Comparison Schedule included in the Required Supplementary Information of its published financial report.

The operating budget used in the loan cancellation calculation is the required supplementary budget schedule, found in the Supplementary Information Section of the Comprehensive Annual Financial Report (CAFR) which is the official financial statement of the government. The calculation, for purposes of loan cancellation, excludes capital expenditures, debt service payments, or capital lease payments for equipment or buildings.

16. Statutory Criteria for Cancellation

Several commenters sought changes to FEMA's statutory authority for cancellation. Although FEMA is unable to provide cancellation outside the authority provided in the 2007 Act, FEMA has attempted to interpret its authority in as broad and flexible manner as possible.

One commenter stated that if a local government's deficit is retained as an eligibility criterion, the unfunded need of the local government should be included for the purpose of determining deficits. If unmet needs are not considered, the commenter said, the local government's reward for conservative management would be to repay their Special CDL, while less fiscally conservative local governments would be rewarded with cancellation. To reward conservative financial management, the commenter encouraged FEMA to look solely at revenues in determining eligibility for cancellation.

FEMA's authority is to cancel the loans of communities whose revenues are insufficient to meet their operating expenses, not simply those who have experienced a loss in revenue. Further, such a calculation may not be in the community's best interest. If an operating deficit exists, then revenue losses may offset only part of a loan. If FEMA looked solely at revenues, then the cancellation may not be total because unreimbursed disaster-related expenditures would not be included in the calculation. When reviewing applications for cancellation, unless applicants indicate that revenues were lost or expenses increased due to other non-Hurricane Katrina or Rita related factors, FEMA will assume that any operating deficit occurred during the three-year period is Hurricane Katrina or Rita related.

Along the same line, another commenter stated that sound fiscal policy before the disaster that allows a community to retain good reserves should not be compromised and reserves depleted to fund the payback of this loan. With respect to reserve balances, these do not play a role in the calculation of the loan cancellation. Further, local governments pledged their future revenues to pay the loan. This pledge was not contingent upon the retention of a certain amount of reserve.

Another commenter declared that organizations that effectively manage expenditures could potentially be adversely impacted, while those that are less effective at managing expenses could enjoy the benefits of full forgiveness. Without proper actual documentation of revenues and expenditures for a particular applicant, FEMA cannot confirm the accuracy of the commenter's statement. Each loan cancellation application will be evaluated independently and this cannot be assumed. According to one commenter, the proposed rule said that for 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. However, FEMA disagrees with the commenter because section 417 reiterates the aforementioned three-full-fiscal-year rule. The commenter suggested that a more appropriate determining factor may be whether or not a local government can prove that it has not "exhibited reasonable financial recovery" after three years even if it did not actually meet the requirement of cumulative operating deficits in the first three years after recovery. Two other commenters reiterated this position, but added that FEMA should require the community to also demonstrate that repayment of the loan will adversely impact the community's long-term recovery.

The authority in section 417 of the Stafford Act authorizes FEMA to cancel loans of communities who are able to show an operating deficit "during the three full fiscal year period following the major disaster." As a result, the Special CDL regulations require that the entity have a cumulative operating deficit during the three full fiscal years following the disaster to qualify for cancellation of all or part of the loan. If no operating deficit exists, then FEMA determines that the community has exhibited reasonable financial recovery for purposes of this program. The statute does not authorize FEMA to cancel loans based on the finances of a community after that three-fiscal-year period.

17. Reimbursement

In the proposed rule at 44 CFR 206.376(a)(4), any transfers from operating accounts to capital fund accounts (for other than routine maintenance purposes) will be reduced from the operating budget for purposes of evaluating any request for loan cancellation. In this final rule, proposed 44 CFR 206.376(a)(4) was re-designated as 44 CFR 206.376(c)(3) without further change. One commenter requested that there be some recognition for capital expenditures that cannot be recovered through the FEMA Public Assistance grant program project worksheet damage assessments or other revenue sources. As an example, the commenter stated that the project worksheet includes the anticipated insurance proceeds an organization would receive from property insurance. These insurance proceeds are often tied up in litigation for long periods of time and recoveries reduced by the cost of litigation. To cover these gaps pending settlement of litigation, the commenter explained, organizations may need to transfer resources from operating funds to capital funds.

Transfers from operating accounts to capital fund accounts are not allowed by FEMA as part of the operating budget calculation because Special CDL funds may not be used for capital expenditures. *See* 44 CFR 206.371(a). However, interest paid on money borrowed to pay amounts FEMA does not advance towards completion of approved projects under the Public Assistance grant program is an eligible unreimbursed disaster-related expenditure.

Another commenter noted that FEMA Public Assistance grants reimburse governments for expenses, meaning that the expenses must first be paid by the community before they can receive FEMA funds. So, although they will eventually receive these expenditures, the commenter asserted, the costs are a drain on the General Fund operating budget and cripple continuing essential operations. The commenter believes that repaying Special CDLs will further worsen the situation.

Although the commenter is correct that the Public Assistance grant program works on a system of reimbursements, FEMA reimburses approved funds on project worksheets within a short period of time. Entities do not languish for long periods of time with reimbursable expenses on their books. If an entity borrowed money while waiting for FEMA reimbursement, the accrued interest related to that loan is an eligible unreimbursed disaster-related expenditure. While it would be easier for communities to pay their expenses without being required to repay their Special CDL, each applicant signed a collateral security agreement at the time the initial loan was made stating they would utilize resources of the local government to ensure repayment of the loan. Such commitment extends until the loan is either cancelled or repaid.

Finally, one commenter asked if a Special CDL recipient would be penalized for moving funding from a pertinent operating expenditure to another. In response, if an expense is an operating expense budgeted for one purpose, but utilized for another operating purpose, there is no "penalty" for such transfer.

18. Loss of Tax Revenue

One commenter requested that FEMA consider the loss of tax revenue in non-operating funds, as they may require the reallocation of ad valorem tax resources from operations to debt service and retirement obligation funding.

As proposed in 44 CFR 206.376(c)(3), a transfer from an operating fund for debt service (*i.e.*, principal and interest payment on bonded indebtedness, capital leases, or other debt for capital expenditures which is paid for through property tax levies) is generally excluded from allowable expenditures in the operating budget calculation. However, such a transfer could be appropriate for inclusion in a loan cancellation determination if the transfer is required by law. Excluding such a transfer from expenditures in the operating budget calculation may result in an operating surplus instead of a deficit.

To account for this situation, FEMA has revised the rule to allow the transfer of ad valorem property tax revenues. *See* 44 CFR 206.376(c)(4). If a Special CDL recipient has property tax revenues affected by the disaster, FEMA will consider the impact of the loss of property tax revenue in Debt Service or Pension Funds (non-operating funds) if all of the following conditions are met: (1) The entity experienced a loss of property tax revenue as a result of the disaster and the assessed value during the three years following the disaster, in the aggregate, is less than the pre-disaster assessed value; (2) the entity has a property tax cap limitation on the ability to raise property taxes post-disaster; and (3) the property taxes are levied through the General Operating Fund and transfers for obligations mandated by law are made to fund Debt Service or Pension Obligations which result in the entity experiencing a reduction of property tax revenues in the General Fund. If all three conditions are met, the amount of property taxes that are transferred to other funds for Debt Service or Pension Obligations funding will not be excluded from the calculation of the operating budget or from expenditures in calculation of the operating deficit, to the extent that the property tax revenues in the General Fund are less than they were pre-disaster.

Another commenter asked simply what impact the ad valorem tax would have on the forgiveness of one's loan. In response, if a loss of revenues from reduced property taxes results in a cumulative operating deficit, then it is possible that all or part of the loan may be cancelled.

19. Form 90–5

One commenter requested that if the Application for Loan Cancellation Form 90–5 (the form used for cancellation applications for CDLs) is used, FEMA should ask for budget revenue in line 6 and actual revenue in line 7 instead of one entry combining the two. The commenter explained that this is because the language in proposed 44 CFR 206.376(a)(1) references a budget, which is a forward projection, as opposed to actual revenues and expenditures. The commenter does not believe that both of these can be addressed in a single line.

FEMA re-designated proposed 44 CFR 206.376(a)(1) as 44 CFR 206.376(a) in this final rule for ease in reading. FEMA has not revised the application form in response to this comment. When filling out the form, applicants should enter on line 6 the annual operating budget for each of the years specified on line 6. This form should be completed for each operating fund that had revenues affected by the disaster (*i.e.*, General Operating Funds, Special Revenue Funds of an operating nature, and Enterprise Funds), and then summarized on one form in total. On line 7, enter the total actual revenues including the proceeds of the Special CDL. FEMA will subtract the Special CDL funds received from the actual revenues in determining the operating deficit. Actual expenditures are required to be entered on line 8 for "normal" non-disaster related expenditures (*i.e.*, regular operating costs), and line 9 is for disaster-related expenses. This method should result in the submission of four forms at the maximum: 1 for General Fund, 1 for Special Revenue Funds, 1 for Enterprise Funds and 1 summary.

Another commenter requested that when developing and evaluating the application form, FEMA take into consideration that local government entities and private non-profit entities operate differently. Further, the commenter encouraged FEMA to recognize that some entities may properly enter "not applicable" relative to some inquiries, such as levying or collecting taxes, so that those entities are not unfairly disadvantaged.

FEMA will consider the operating differences between a local government and a non-governmental entity, such as a hospital, in the cancellation evaluation. If no property taxes are levied or collected by a non-profit entity, there will be no impact to the applicant if they enter "not applicable" to the question on property taxes, in determining loan cancellation eligibility.

20. Other Sources of Funds

School districts benefitted from an influx of Federal funding after Hurricane Katrina using aid from the Department of Education to get schools back in operation. According to one commenter, now that those funds are no longer available, school districts are only now realizing the full extent of their revenue shortfalls. Further, State education funding to these districts is also decreasing because of decreased enrollments. The commenter alleged that requiring school districts to repay these loans could create budget deficits.

The effect of funding from the Department of Education (DOEd) on the Special CDL Program is outside the scope of FEMA's authority. If the DOEd funding is not adequate to cover all revenues affected by the disaster during the three-year period following the disaster, and the school district has an operating deficit as a result of other revenue losses or reduced enrollment resulting in revenue losses, then it may qualify for loan cancellation. As for repayment of the loan, each entity knew of commitments of operating revenues that were pledged at the time the loan was made. Further, each applicant signed a collateral security agreement pledging future revenues to be used to repay the loan, if necessary.

Two commenters asked, when calculating a cumulative operating deficit, whether FEMA-reimbursed expenses should be deducted from the actual revenues and expenditures of the local government as published in the official financial statements of the local government.

FEMA does not believe FEMA-reimbursed expenses should be deducted from the actual revenues and expenditures of the local government as published in the official financial statements of the local government. The expenditures incurred that are of an operating nature, even if reimbursed by FEMA through the Special CDL program, the Public Assistance Program, or some other program should not be excluded. However, FEMA staff will exclude the Special CDL proceeds from the revenues as part of the calculation. Further, funds received from a FEMA program that were applied to operating costs should not hurt the applicant's bottom line as those revenues should be canceled out by the incurred cost.

Finally, one commenter asked if insurance proceeds could be excluded from calculation of the operating deficit. Insurance proceeds that were received to address business interruption or to reimburse the entity for expenditures of an operating nature must be included as revenue since the insurance proceeds were used to cover expenses of an operating nature.

21. Deadlines

One commenter noted that the proposed rule does not provide a timeline for FEMA to conduct its reviews and make determinations for loan cancellation. The commenter requested that the final rule include such timelines as well as FEMA's timeline for reviewing appeals.

As has traditionally been done in the CDL program, once an applicant submits an application for cancellation, FEMA performs an initial review and either approves the request or informs the applicant that the application is insufficient, and provides applicants an opportunity to provide additional documentation to support its request for cancellation. In this initial determination, FEMA attempts to be as flexible as possible in considering additional documentation to support cancellation. However, the timeline for review is not indefinite, and applicants must provide the information as quickly as possible during the appeals process so the loan cancellation determination can be finalized. Limiting the applicant's time during which it can provide additional supporting information and engage in a dialogue with FEMA staff would provide a disservice to the applicant.

To protect the applicant's flexibility, while ensuring that FEMA will issue its determination in a timely manner, in response to the comment, FEMA revised 44 CFR 206.376(f) to provide that once all required and requested information has been provided by the applicant including un-reimbursed disaster related expenses, the Director of the Public Assistance Division will make a cancellation determination within 60 days. The term "required" represents that information explicitly required by the regulations (*e.g.*, financial reports, and tax rates established in 44 CFR 206.376(e)). The term "requested" relates to information such as invoices and purchase orders FEMA may seek from the applicant in support of the applicant's stated unreimbursed disaster-related expenditures.

22. Outside the Scope

FEMA received several comments that, although substantive, were outside the scope of this rulemaking. One commenter encouraged FEMA to incorporate a formula in the Stafford Act for the designation of a "catastrophic disaster" to differentiate those disasters of more devastating impact from the existing category of major disaster. Another commenter requested that the CDL program revert to a grant program as it was when it originated in 1970. Finally, one commenter felt that rather than singling out one area or local jurisdiction, there should be a loan cancellation program for all taxpayers who suffer hardship from floods and storms. This commenter stated that forgiveness should not be limited to the debts of cities, towns, counties and parishes, but provided to the individuals as well, and should alleviate mortgage and SBA debt. Each of these comments is outside the scope of this rulemaking and would require a change to the Stafford Act to implement. FEMA does not have the authority to change the Stafford Act.

IV. Statutory and Regulatory Review

A. Executive Order 12866

In the April 2009 proposed rule, FEMA stated that this rule is an economically significant regulatory action 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 CDL Program. 74 FR 15231. The purpose of this final rule is to address comments and finalize the 2005 interim rule that established the Special CDL program, and further revise those regulations to implement cancellation provisions that were proposed in the April 2009 notice of proposed rulemaking. Those cancellation provisions are authorized by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28, section 4502(a), Public Law 110–28, section 4502(a), 119 Stat. 2061 (2007 Act). Pursuant to that authority, FEMA shall cancel "* * * all or any part of [a] Special Community Disaster Loan 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." *See* 42 U.S.C. 5184. The cancellation provisions apply only to Special CDLs. CDLs, which are issued as a separate program, are not affected by this rule. Consequently, this rule will only affect those local governments in the Gulf Coast region who received Special CDLs following Hurricanes Katrina and Rita and will not have any impact on local governments that do not have a Special CDL.

In this rule, FEMA is establishing the application requirements communities would be required to follow to apply for cancellation of their Special CDL. Although it also finalizes the application requirements for the issuance of loans, these loans are statutorily limited to communities affected by hurricanes Katrina and Rita, and FEMA was only authorized to approve loans during fiscal years 2005 and 2006. Therefore, FEMA is no longer authorized to grant new Special CDLs, and the only substantive change effected by this final rule is the establishment of cancellation procedures.

In establishing cancellation procedures, FEMA used the procedures established for the CDL program. The Special CDL program and the CDL program share the same cancellation authority (Section 417 of the Stafford Act), and FEMA has been using the cancellation procedures for the CDL program since 1990. FEMA has found the cancellation procedures for the CDL program to be successful in providing the information necessary to determine whether cancellation is appropriate. Based on this success, FEMA proposed to apply the same provisions for the Special CDL program.

In response to the proposed rule, FEMA received several comments seeking blanket cancellation of the loans, with no application required. The blanket cancellation of loans is outside the scope of FEMA's authority. The text of the authorizing statute shows that Congress did not automatically cancel 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.

Among other suggestions for revision of the regulations, FEMA received comments seeking the consideration of additional costs (such as the increase in market values) and exclude certain sources of revenue (such as insurance proceeds). Commenters also sought the consideration of estimated expenses and revenues, in lieu of the proposed method of reviewing an applicant's actual expenses and revenues to determine if it experienced an actual operating deficit in the three full fiscal years after the event. FEMA evaluated these comments and discusses each of them in the discussion of the comments section, Section III of this final rule. In the end, FEMA has revised the rule as a result of public comments, to make five substantive changes.

First, transfers from an operating fund for debt service are allowed for the transfer of ad valorem property tax revenues under certain conditions *See* 44 CFR 206.376(c)(4). Second, FEMA added definitions for the terms "revenues" and "operating expenses." *See* 44 CFR 206.376(b). Third, the title of the individual who makes FEMA's initial determination on the application for cancellation has been clarified to remove the appearance that the same individual who makes the initial determination also makes the determination on appeal *See* 44 CFR 206.376(f). Fourth, FEMA revised 44 CFR 206.376(f), to add a new paragraph (f)(1) which provides that once all required and requested information has been provided by the applicant including un-reimbursed disaster related expenses, the Director of the Public Assistance Division will complete the initial evaluation within 60 days. And, finally, FEMA added language that at the local government's discretion, the three-full-fiscal-year period following the disaster is either a 36-month period beginning on September 1, 2005, or the 36 months of the local government's fiscal year as established before the disaster. *See* 44 CFR 206.376(c)(2).

These revisions create no change in the overall impact of this rule. The overall impact of this rule is the cost to the applicant to apply for the cancellation, as well as the impact on the economy of potentially forgiving all Special CDLs and any related interest and costs. The burden on the public is low with respect to new administrative requirements associated with submitting the Application for Loan Cancellations. As explained in the proposed rule, FEMA estimates that the annual estimated cost to submit the Application for Loan Cancellation will be $4,850.32. FEMA issued 152 Special CDLs totaling $1,270,501,241 to 109 eligible applicants in Mississippi and Louisiana. The application period for these loans has closed, so no new loans can be granted under this program. If all 152 loan recipients apply for and are found eligible for full cancellation under this rule, up to $1,270,501, 241, plus any applicable interest and costs, could be forgiven.

The maximum total economic impact of this rule, therefore, 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 effects of a specific loan cancelation would only occur once, rather than annually.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), FEMA has considered whether this final 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 final 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 final 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 CDLs authorized in the 2005 and 2006 Acts. This final rule will not impose any additional requirements on local governments that do not have Special CDLs.

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 ongoing operating expenses and debt related to the loan. FEMA 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 final rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule is excluded from the Unfunded Mandates Reform Act as provisions in proposed or final Federal regulations that require compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government, and those that provide for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government. *See* 2 U.S.C. 1503.

D. Federalism

Pursuant to Executive Order 13132, FEMA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications. Eligible applicants who applied for Special CDLs, or who received Special CDLs and choose to apply for loan cancellation do so voluntarily. State policymaking discretion is not affected.

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. The changes in this final rule constitute actions that qualify for the following categorical exclusions: the enforcement of existing Federal regulations, and the involvement in emergency and disaster response and recovery activities under section 417 of the Stafford Act. *See* 44 CFR 10.8(d)(2)(iv) and 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). FEMA submitted with the interim rule 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, 2012. This final rule does not contain any changes that would affect that currently approved collection.

In this final rule, FEMA is finalizing the Special CDL regulations published in the Interim Rule and implementing the cancellation provisions outlined in the 2007 Act as applied to loans issued under the 2005 and 2006 Acts. As previously stated, FEMA intends to apply the cancellation procedures already existing under the CDL program as outlined in 44 CFR 206.360 through 206.367. It is intended that applicants seeking cancellation of a Special CDL will use the Application for Loan Cancellation and its associated forms, if applicable, already approved by OMB under OMB Control Number 1660–0082, which expires on January 31, 2010.

Collection 1660–0082 uses FEMA Form 90–5, Application for Loan Cancellation, which has an annual number of respondents of one (the number of communities who apply for cancellation of a Community Disaster Loan under the existing procedures in 44 CFR 206.366). With this Final Rule, applicants seeking cancellation of a Special Community Disaster Loan will use the same form submitted for Community Disaster Loans. FEMA therefore seeks to amend that existing collection to increase the number of respondents to 153. This number reflects the one 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 allowed in this rule.

Accordingly, in the proposed rule, FEMA published a 60-day notice seeking a revision to the already existing collection of OMB Control Number 1660–0082, FEMA Form 90–5, to include the cancellation of Special CDLs. FEMA received no public comments in response to the 60-day notice. Section 3507(d) of the PRA and 5 CFR 1320.11 require Federal agencies to submit new and revised collections of information to OMB for review. FEMA will submit the appropriate request to OMB for approval, with a copy of this rule. FEMA invites the general public to comment on the 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 No.	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
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 proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before February 18, 2010.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 effect 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.

■ Accordingly, the Interim Rule published on October 18, 2005 (70 FR 60443), is adopted as a final rule with the following changes:

PART 206—FEDERAL DISASTER ASSISTANCE

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

Authority: 42 U.S.C. 5121–5206; 6 U.S.C. 101; 6 U.S.C. 311–321j; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. In § 206.370 revise paragraphs (a) and (b) 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), revise 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 Director of the Public Assistance Division 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 three full 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, 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 Director of the Public Assistance Division.

* * * * *

(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 Director of the Public Assistance Division. He/she may also submit appropriate recommendations to the Director of the Public Assistance Division.

(d) The Director of the Public Assistance Division 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 Director of the Public Assistance Division 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 Regional Administrator. The Director of the Public Assistance Division 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) FEMA shall cancel repayment of all or part of a Special Community Disaster Loan to the extent that the Director of the Public Assistance Division determines that revenues of the local government during the three-full-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 of a municipal operating character.

(b) *Definitions.* For loan cancellation purposes,

(1) "Operating budget" means actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) "Revenue" means any source of income from taxes, fees, fines, and other sources of income, and will be recognized only as they become susceptible to accrual (measurable and available).

(3) "Three-full-fiscal-year period following the disaster" means either a 36-month period beginning on September 1, 2005, or the 36 months of the applicant's fiscal year as established before the disaster, at the applicant's discretion.

(4) "Operating expenses" means those expenses and expenditures incurred as a result of performing services, including salaries and benefits, contractual services, and commodities. Capital expenditures and debt service payments and capital leases are not considered operating expenses. Under accrual accounting, expenses are recognized as soon as a liability is incurred, regardless of the timing of related cash flows.

(c) *Revenue Calculation procedures.* (1) If the tax rates and other revenues or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the three full fiscal years subsequent to the major disaster, the tax rates and other revenues 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.

(2) At the applicant's discretion, the three-full-fiscal-year period following the disaster is either a 36-month period beginning on September 1, 2005 or the 36 months of the applicant's fiscal year as established before the disaster. If the applicant's fiscal year is changed within the 36 months immediately following the disaster, the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period. Should the applicant elect the 36-month period beginning September 1, 2005, FEMA will prorate the revenues and expenses for the partial years based on the applicant's annual financial statements.

(3) 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.

(4) Notwithstanding paragraph (c)(3) of this section, the amount of property taxes that are transferred to other funds for Debt Service or Pension Obligations funding will not be excluded from the calculation of the operating budget or from expenditures in calculation of the operating deficit, to the extent that the property tax revenues in the General Fund are less than they were pre-disaster. FEMA will consider the impact of the loss of property tax revenue in Debt Service or Pension Funds (non-operating funds) if all of the following conditions are met:

(i) The entity experienced a loss of property tax revenue as a result of the disaster and the assessed value during the three years following the disaster, in the aggregate, is less than the pre-disaster assessed value;

(ii) the entity has a property tax cap limitation on the ability to raise property taxes post-disaster; and

(iii) the property taxes are levied through the General Operating Fund and transfers for obligations mandated by law are made to fund Debt Service or Pension Obligations which result in the entity experiencing a reduction of property tax revenues in the General Fund.

(5) It is not the purpose of this loan program to underwrite pre-disaster 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.

(d) *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 unreimbursed 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.

(e) *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 three 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 and 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 Director of the Public Assistance Division to consider in rendering a decision on the cancellation request.

(f) *Determination.* (1) The Director of the Public Assistance Division will make a cancellation determination within 60 days of the date the applicant submits all required and requested information, including documentation in support of un-reimbursed disaster related expenses.

(2) If, based on a review of the Application for Loan Cancellation and FEMA audit, the Director of the Public Assistance Division 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 Director of the Public Assistance Division'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 a 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.

(3) 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.

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

(5) *Appeals.* If an Application for Loan Cancellation is disapproved, in

whole or in part, by the Director of the Public Assistance Division, 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 on the additional information is final.

■ 7. Amend § 206.377 by revising the first sentence of the introductory text in paragraph (b), adding a new sentence at the end of paragraph (b)(2), revising paragraph (b)(4) and revising (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. However, interest will continue to accrue.

* * * * *

(c) * * *

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

* * * * *

Dated: January 12, 2010.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–925 Filed 1–15–10; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0809251266–81485–02]

RIN 0648–XT61

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2009 commercial summer flounder quota to the Commonwealth of Virginia. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 17, 2009, through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Management Specialist, 978–281–9257.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). On September 13, 2005, NMFS published the final rule to amend the regulations implementing the Summer Flounder, Scup, and Black Sea Bass FMP to address late-season circumstances that necessitate a state quota transfer (70 FR 53969). This rule specified that such late-season quota transfers could be approved, even if the transfer request is made in the subsequent fishing year, and would be valid for the fishing year for which the request is made. The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

In response to unforeseen circumstances late in the 2009 fishing year, North Carolina has agreed to transfer 24,548 lb (11,134.79 kg) of its 2009 commercial quota to Virginia to cover the summer flounder landings of three vessels granted safe harbor in Virginia, due to vessel damage and stormy weather, on December 17, 2009, and December 18, 2009. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2009 are: North Carolina, 2,854,494 lb (1,294,777 kg); and Virginia, 2,371,022 lb (1,075,477 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 12, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–817 Filed 1–13–10; 4:15 pm]

BILLING CODE 3510–22–S