requirements, Security measures, Waterways.

In consideration of the foregoing, the Coast Guard amends Subpart C of Part 165 Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation of Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 165.5; 49 CFR 1.46

§ 165.T96–073 [Removed]

2. Section 165.T96–073 is removed.

Dated: February 24, 1997.

C.E. Bone,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 97–17066 Filed 6–30–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

RIN 1810–AA84

Impact Aid Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations governing the Impact Aid Program under title VIII of the Elementary and Secondary Education Act of 1965 (ESEA or Act), as amended by the Improving America's Schools Act of 1994 (IASA). The program, in general, provides assistance for maintenance and operations costs to local educational agencies (LEAs) that are affected by Federal activities. These regulations implement a number of changes from the previous Impact Aid laws, Pub. L. 81–874 and Pub. L. 81–815, which were repealed when title VIII of the ESEA was enacted, and clarify and improve the administration of the program. In addition, these regulations make technical amendments to implement legislative changes made to title VIII of the ESEA by the Impact Aid Technical Amendments of 1996 (Pub. L. 104–195) and the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201).

These regulations cover the following subjects: Application requirements, overpayment forgiveness (section 8012 of the Act), payments for Federal property (section 8002 of the Act), payments for children with severe disabilities (section 8003(g) of the Act), withholding and related procedures for Indian policies and procedures (sections 8004(d)(2) and 8004(e) (8) and (9) of the Act), determinations under section 8009 of the Act, and administrative hearings and judicial review (section 8011 of the Act).

EFFECTIVE DATE: These regulations take effect on July 31, 1997.

FOR FURTHER INFORMATION CONTACT: For further information on this part, please contact Catherine Schagh. Telephone: (202) 260–3858. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 20, 1994, the President signed into law the IASA (Pub. L. 103–382). The IASA reauthorized the Impact Aid Program as title VIII of the ESEA, and made a number of changes to the program. Under the Impact Aid Program, assistance is provided for maintenance and operations costs to LEAs affected by Federal activities, including the presence of tax-exempt Federal property and an increased student population due to Federal property ownership or activities.

Generally, in implementing the IASA, the Department is issuing regulations only where absolutely necessary, or to provide increased flexibility or reduce burden. As a part of that process, the Secretary published in the **Federal Register** on September 29, 1995, a final Impact Aid regulation removing regulations that were obsolete due to changes made in the statute by the IASA, or that were unnecessary because they simply repeated statutory provisions. The Secretary indicated in those technical regulations that he intended to publish a notice of proposed rulemaking (NRPM) in the future to implement provisions of the new law that were not included in those final regulations, and to make any substantive changes that were identified as needed under the Secretary's reinvention review.

On October 7, 1996, the Secretary published an NPRM to accomplish those objectives (61 FR 52564). These final regulations, which contain the following provisions, are substantially similar to that NPRM:

- In subpart A (General), existing § 222.4 is amended to conform the proof of mailing requirements to those accepted under other Department programs, which do not accept private metered postmarks or mail receipts that are not dated by the U.S. Postal Service, and new §§ 222.12–222.18 are added to implement the authority in section 8012 of the Act for forgiveness of certain Impact Aid overpayments;
- In subpart B (Payments for Federal Property under Section 8002 of the Act), existing § 222.22 is amended to provide clarification about the treatment of revenues from activities conducted on Federal property, and a new § 222.23 is added to implement the new statutory method for valuing Federal property.
- A new subpart F is added (Payments to Local Educational Agencies for Children with Severe Disabilities under Section 8003(g) of the Act—§§ 222.80–222.85) to implement the authority in section 8003(g) for supplemental payments for children with severe disabilities;
- In subpart G (Special Provisions for Local Educational Agencies that Claim Children Residing on Indian Lands), new §§ 222.114–222.122 are added to implement the Secretary's expanded enforcement authority for Indian policies and procedures in sections 8004(d)(2) and 8004(e)(8)–(9) of the Act;
- In subpart J (Impact Aid Administrative Hearings and Judicial Review under Section 8011 of the Act), changes are made to §§ 222.151, 222.152, 222.157, and 222.158, including, in § 222.151, the adoption of a shortened time for filing administrative appeals (30 days from the adverse action, rather than the current 60 days) to expedite the redistribution of recovered overpayments to all applicants;
- In subpart K (Determinations under section 8009 of the Act), § 222.161 is revised to implement new terms used in section 8009 of the Act, § 222.164 is revised regarding notification procedures for a party initiating a proceeding, § 222.164(b)(5) is revised to explain the Secretary's flexible predetermination procedures, and § 222.165 is revised regarding administrative appeals of section 8009 determinations to include, in part, a more expedited hearing process.

In addition, the following technical amendments are made. In subpart C, § 222.36(b) (1) and (2) is amended to conform to legislative changes in section 8003 of the Act made by section 376 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201). Previously, section 8003(a)(3) of the Act provided that, for a school district to be eligible to receive a payment for federally connected children under section 8003(a)(1) (F) or (G) (formerly identified as ''civilian b's''), those children had to number at least 2000 in average daily attendance (ADA) *and* 15 percent of the school district's total

ADA. The children described in subparagraph 8003(a)(1) (F) or (G), respectively, are those children who reside on Federal property but whose parents neither work on Federal property nor are on active duty in the military, or children who do not reside on Federal property but reside with civilian parents employed on Federal property in the same State. Section 222.36(b) (1) and (2) of the existing regulations contains parallel requirements. Effective for fiscal year (FY) 1997, the National Defense Authorization Act for Fiscal Year 1997 modified the threshold eligibility requirement in section 8003(a)(3) to require a school district's section 8003(a)(1) (F) and (G) children to number at least 1000 in ADA *or* 10 percent of the school district's total ADA. A corresponding amendment is made to § 222.36(b) (1) and (2) of these final regulations.

In subpart K, a technical amendment is made to conform § 222.162(a) to legislative changes in section 8009 of the Act made by section 10 of the Impact Aid Technical Amendments Act of 1996 (Pub. L. 104–195). Previously, section 8009 of the Act specified that, to be certified, a State must have a disparity percentage of no more than 25 percent for FYs 1995, 1996, and 1997, and no more than 20 percent for FYs 1998 and 1999. Section 222.162 of the existing regulations contains parallel requirements. The Impact Aid Technical Amendments Act of 1996 modified section 8009 of the Act to continue the 25 percent standard for FYs 1998 and 1999, rather than implement a new 20 percent standard. These final regulations implement this change by revising § 222.162(a) to eliminate the 20 percent requirement for FYs 1998 and 1999 because that requirement is no longer authorized by section 8009 of the Act.

Finally, for consistency purposes, a technical amendment is made to remove from the Impact Aid regulations unnecessary citations to the Secretary's general rulemaking authority (20 U.S.C. 1221e–3 and 20 U.S.C. 1221e–3(a)(1)).

Significant Changes

In addition to minor editorial, clarifying, and technical revisions, the following significant changes from the NPRM are made in these final regulations.

1. *Sections 222.12–222.18.* The regulatory sections that implement the Secretary's authority in section 8012 of the Act to forgive certain Impact Aid overpayments are reorganized in response to public comment to make them shorter and easier to follow. As a consequence of this reorganization, three new sections are added. Substantive changes from the NPRM concerning the overpayment forgiveness provisions are described separately below.

2. *Section 222.16 (§ 222.13(c) in the NPRM).* The requirements for information and documentation to be submitted by LEAs requesting overpayment forgiveness are simplified and changed. LEAs will not be required to submit maximum local real property tax rate data, or data regarding the equalized assessed valuation of real property per pupil (EAVPP). Instead, any LEA requesting forgiveness, not just LEAs whose boundaries are the same as a Federal military installation, will be required to submit its average per pupil expenditure (APPE) data, and the APPE figure for its State (in addition to local real property tax rate data that most LEAs also will submit).

3. *Section 222.17 (§ 222.14 in the NPRM).* The criteria that the Secretary will use to determine what constitutes undue financial hardship and serious harm to an LEA's educational program are simplified, by reducing them to three measures: The total amount of the LEA's eligible overpayments on the date of its forgiveness request; the LEA's local real property tax rate in comparison to the State average local real property tax rate; and the LEA's APPE in comparison to the State APPE. For LEAs whose boundaries are the same as a Federal military installation, and for other LEAs with no or minimal local real property tax revenues in comparison to other LEAs in the State, the Secretary will use only an APPE measure in addition to the amount of the LEA's total eligible overpayments.

4. *Section 222.18 (§ 222.15 in the NPRM).* The portion of the total eligible overpayment that the Secretary may forgive is increased, by raising the carryover amount that is allowed before repayment is required from five percent to 10 percent of the LEA's preceding year's total current expenditures.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the NPRM, the Department received eight letters, which were from State and local officials and the National Association for Federally Impacted Schools (NAFIS). Several commenters indicated their support of a number of aspects of the proposed regulations. Most of the letters contained multiple comments and addressed the proposed overpayment forgiveness provisions. An analysis of the comments, and the Secretary's responses to those comments, is presented below.

Clarity of Regulations

Comment: One commenter indicated that the regulatory requirements were not clearly stated because they refer to numeric sections of the law with which most people are unfamiliar, so that applicants are required to reread sections of the law to understand the effect of the regulations. In addition, the commenter stated that the regulations would be more understandable if shorter sections were used and that the numeric and alphabetical subsection labelling is confusing.

Discussion: In keeping with the Administration's regulatory reform initiatives, the Department is committed to reducing the volume of regulations. Thus, for example, the Department often avoids repeating in regulations those provisions of law that are clear in their statutory form. While acknowledging that this policy may require a reader to refer to two documents, rather than one, the Department believes that the benefits of this approach outweigh any disadvantage with respect to the Impact Aid regulations.

Applicants for Federal financial assistance under a particular program are urged to familiarize themselves with the statute governing that program, as well as the regulations. Copies of the current Impact Aid statute are available upon request from the Department's Impact Aid Program office. In addition, a citation to the portion of the Impact Aid law, as published in the United States Code, relating to each regulation follows each section of the program regulations. An applicant needing clarification of a regulatory or statutory requirement is invited to communicate with the departmental representative listed in this preamble under the heading ''For Further Information Contact.''

In preparing regulations and other documents for publication in the **Federal Register**, the Department adheres to requirements prescribed by the Office of the Federal Register. These requirements—applied uniformly to all Federal Departments and Agencies—govern such matters as the lettering and numbering of paragraphs, the order of that lettering and numbering, and indentation of paragraphs. The Department has submitted a copy of this comment to the Office of the Federal Register for the information and use of that Office.

Subject to the **Federal Register** requirements, the Department's policy is to draft regulatory sections that are short, clear, and as readable as possible.

As a part of this policy, on September 29, 1995, the Secretary published comprehensive final regulations for the Impact Aid Program that reorganized and streamlined the existing regulations to be logically organized, clearly stated, and easier to use. These final regulations are designed to fit into that streamlined reorganization. In addition, changes have been made in the overpayment forgiveness provisions of this final regulation (§§ 222.12–222.18) to shorten and simplify those individual regulatory sections.

Changes: The overpayment forgiveness provisions (originally §§ 222.12–222.15 in the NPRM) have been reorganized to shorten individual regulatory sections, resulting in the addition of three new sections (now §§ 222.12–222.18). The regulatory language also has been simplified and condensed where possible.

Subpart A—General

Application Filing Requirements (§ 222.4)

Comment: One commenter believed that not being able to use private metered postmarks for applications will cause unnecessary hardship to districts and discriminate against law-abiding districts for the misuse of a few other districts that, in any event, already are regulated by the U.S. Postal Service. Another commenter agreed with the Department's proposal not to accept private metered postmarks.

Discussion: Changing to a proof of mailing standard that does not accept private metered postmarks or mail receipts that are not dated by the U.S. Postal Service is consistent with the standards of other Department programs. Although the U.S. Postal Service does regulate in this area, the Impact Aid Program has received applications in the past with private postmark dates that were manipulated without detection by the U.S. Postal Service. This regulation does not prohibit districts from using private meter postage for mailing applications. Rather, the purpose of the provision is to ensure that districts are aware that private meter postage alone will not be sufficient proof of mailing should application receipt issues arise after a deadline has passed.

Changes: None.

Comment: One commenter suggested that the Department accept electronic mail as an alternative means of application receipt.

Discussion: As a goal, the Department strongly supports electronic transmission as an alternative means of submitting an application for Federal financial assistance, and has begun investigating appropriate methods and necessary technology support systems to accomplish that objective on a Department-wide basis. As part of this process, the Department is participating in an interagency working group on the issue, and currently uses electronic transmission and receipt for documents in several areas, including small purchase contracts and data transmission for postsecondary education grants. At this time the Department is not able to accept Impact Aid applications that have been transmitted electronically, but continues to move ahead on this matter to prepare for future acceptance of electronic submissions.

Changes: None.

Overpayment Forgiveness Provisions (§§ 222.12–222.15 in the NPRM; § 222.12–222.18 in these final regulations)

General.

Comment: One commenter, an LEA, believed that it was not affected by the overpayment forgiveness provisions because the district was in an equalized State that reduced State aid by an amount equal to 100 percent of the district's Impact Aid.

Discussion: Even if an LEA's State aid were reduced by an amount equal to 100 percent of the LEA's Impact Aid payment, it could benefit from the overpayment forgiveness provisions. This is because, unless its overpayment were forgiven, the LEA would still be responsible for repayment to the Federal Government of any Federal funds received by the district for which the district was not eligible.

Moreover, when making reductions in State aid, States that are certified as equalized States qualified to make reductions in State aid under section 8009(b) of the Act are required to set aside and not consider certain of an LEA's Impact Aid receipts, including funds under section 8003(f) for heavily impacted districts. See section 8009(d)(1)(B) of the Act and 34 CFR 222.161(a)(1)(iii) and 222.163. The most recent data available to the Department from the commenter's State indicate that the State is properly setting aside the appropriate categories and amounts of Impact Aid and that a reduction in State aid equal to less than 100 percent of the commenter's Impact Aid was in fact made. Reductions in excess of the amounts authorized in section 8009(d)(1)(B) of the Act and 34 CFR 222.161(a)(1)(iii) and 222.163 would be unlawful.

Changes: None.

Comment: One commenter stated that the proposed overpayment forgiveness provisions are too strict, and that no repayment should be sought if the overpayment was due to the error of the Department or the State educational agency, particularly if the error concerned local contribution rates (LCRs).

In addition, the commenter believed that overpayments should be forgiven in full if the Department did not discover the error in the same fiscal year in which the affected payment was made. In particular, the commenter believed that the Department should review claims for federally connected children with disabilities promptly to catch any errors made by school districts in their claims of those children.

Discussion: The proposed overpayment forgiveness provisions include flexibility for the Secretary to forgive an overpayment in whole if the Secretary determines on a case-by-case basis that repayment would be manifestly unjust (§§ 222.13(a)(2)(ii) and 222.15(a)(2) in the NPRM; §§ 222.14(c)(2) and 222.18(a)(2) in the final regulations). As indicated in the preamble to the NPRM (61 FR 52566), the Secretary anticipates that this special provision will be used only on the rare occasion when an overpayment was due to an error on the part of the Department that an LEA could not reasonably be expected to identify and report. An example of a rare occasion when this paragraph would apply is a case in which a calculation of an LEA's payment was made by the Department using the wrong LCR and the LEA could not have known that the LCR was too high.

Because payments based upon federally connected children under section 8003 of the Act now are based upon preceding year student count data, the Impact Aid Program normally would have time to discover any errors in those reported student counts before making payments based upon those children. However, because the Department cannot verify the data in every application each year prior to making payments, it is important that applicants carefully read and follow the application instructions to ensure that only eligible federally connected children, including eligible federally connected children with disabilities, are included in their student counts.

Changes: None.

Comment: One commenter stated that the overpayment forgiveness provisions should not be applied retroactively, and that forgiveness requests filed before the effective date of the final regulations should be considered only under the

provisions of the law in effect at the time the request was filed.

Discussion: In reauthorizing the Impact Aid Program, Congress provided authority to the Secretary to forgive overpayments owed by LEAs when it enacted section 8012 of the Act. This unique and limited authority requires, by its very nature, the careful balancing of competing interests of Impact Aid recipients. The competing interests involved in deciding overpayment forgiveness requests specifically noted by the Secretary in the preamble to the NPRM are the interests of the districts applying for forgiveness and the interests of those applicants eligible for redistribution of the overpaid Impact Aid funds. Rather than undertake the difficult balancing of these competing interests solely on the basis of statutory authority that lacks specific measures, and in a hasty and relatively uninformed manner, the Secretary through this rulemaking proceeding sought to obtain information and views from all of the affected parties about how best to implement the new legislation.

The appropriateness of seeking comments on this unprecedented authority is reflected in the facts that the proposed overpayment forgiveness provisions garnered more public comments than the other provisions of the NPRM and that the Secretary has made significant changes as a result of those comments. Deciding overpayment forgiveness requests solely on the basis of the statute without regard to the information and views expressed during the rulemaking proceeding would, in the Secretary's view, result in uninformed and inappropriate decisions being made without the benefit of the knowledge acquired in the rulemaking proceeding.

The Secretary has received a number of overpayment forgiveness requests, both before and after the statutory authority was enacted. For reasons of fairness, the Secretary concludes that it would be inappropriate to subject some overpayment requests to the statutory standard without benefit of implementing regulations, but consider other overpayment requests under the more fully developed standards. Therefore, all of those requests will be decided using the same consistent and uniform measures that are published in these final regulations.

Changes: None.

''Manifestly Unjust'' Provision (§ 222.13(a)(2)(ii) in the NPRM; § 222.14(c)(2) in the final regulations)

Comment: One commenter stated that the manifestly unjust provision is too vague and needs clarification as to the types of Department errors that are covered and how the Department will determine what overpayments qualify under that special provision.

Discussion: The special provision that allows the Secretary to forgive an overpayment if it is determined, on a case-by-case basis, that the repayment would be ''manifestly unjust,'' is designed to allow the Secretary flexibility to forgive overpayments caused by Department error in future unanticipated situations. It would defeat the flexible nature of this provision to speculate about the possible situations that might occur and limit its applicability to those situations. As the Secretary indicated in the preamble to the NPRM, however, the Secretary anticipates applying this provision only on the rare occasion in which an LEA could not reasonably be expected to identify and report the overpayment when it is made.

Changes: None.

Filing Deadlines (§ 222.13(b) in the NPRM; § 222.14 (a) and (b) in the final regulations)

Comment: One commenter stated that the time limit for filing a forgiveness request should be changed from 30 to 60 days because of the slow receipt of mail by rural Indian school districts. The commenter believed that 30 days would not give these districts sufficient time to prepare a reply and submit the required supporting documentation.

Discussion: The time limit for filing a forgiveness request is determined for all school districts from their date of receipt of the overpayment notice, not from the date of mailing of that document. Therefore, differences in the length of time that it takes for various school districts to receive the overpayment notices should not affect the amount of time available to respond with an overpayment forgiveness request. The Secretary believes that 30 days is a reasonable amount of time to allow for a school district to submit a forgiveness request. If that is not sufficient time for the districts also to gather the required supporting documentation, the regulations allow a district to request an extension of time for the submission of that information (§ 222.13(b)(3) in the NPRM; § 222.14(b) in the final regulations).

Changes: None.

Required Information and Documentation (§ 222.13(c) in the NPRM; § 222.16 in the final regulations)

Comment: One commenter stated that per pupil expenditure (PPE) data should be required from all school districts, rather than just from school districts with boundaries that are the same as a Federal military installation (''coterminous'' districts). Another commenter believed that PPE data should be treated similarly for coterminous school districts as for other school districts that have real property taxing authority. To accomplish this result, the commenter believed that PPE data for coterminous districts must exclude certain expenditures such as repair, renovation, and building maintenance to Federal buildings, expenditures for construction of new buildings, school bus purchases, and capital outlay, because a ''taxing LEA'' could fund those expenditures through bonded debt that would not be included in its PPE figure.

Discussion: The Secretary agrees that the PPE figure is a good measure (in addition to others) to use for all school districts in determining whether a district has the fiscal capacity to repay an overpayment. Therefore, as discussed below, changes have been made in the standards that the Secretary will apply to determine whether repayment of an overpayment would cause undue financial hardship and serious harm to a district's educational program. A corresponding change has been made in the data that an LEA is required to submit, to require every LEA requesting forgiveness to submit its average PPE (APPE) data and the APPE figure for its State.

The same definition of APPE for an LEA, which is based upon the definition of ''current expenditures'' as defined in section 8013 of the Act, applies to all school districts, and excludes capital outlay expenditures. Thus, if a coterminous school district has extensive repair or renovation costs, those costs likely would be classified as capital outlay expenditures and excluded from the district's current expenditures (and its APPE), whether or not they are funded through debt service. Likewise, the purchase of replacement equipment, such as school buses, is treated as a capital outlay and excluded from current expenditures and APPE figures if the State treats those purchases as a capital outlay.

Changes: A change is made to require all LEAs requesting overpayment forgiveness to submit APPE data for the preceding year, rather than requiring only coterminous districts to submit those data.

Comment: One commenter stated that the Secretary should not require LEAs to submit information about a State's maximum local real property tax rate or the equalized assessed valuation of real property per pupil (EAVPP), because

that information should not be used to determine whether repayment of an overpayment would cause undue financial hardship and serious harm to an LEA's educational program.

Discussion: The Secretary has decided to use standards other than a State's maximum local real property tax rate and a district's EAVPP in determining whether the district has the fiscal capacity to repay an overpayment, and, as discussed below, will not apply these measures to determine whether repayment of an overpayment would cause undue financial hardship and serious harm to a district's educational program. Accordingly, LEAs will not be required to submit data on these measures.

Changes: A change has been made by removing the requirement that an LEA requesting overpayment forgiveness must submit State maximum local real property tax rate and EAVPP data (§ 222.13(c)(1) (iii) and (v) in the NPRM; § 222.16(a) in the final regulations).

Determination of Undue Financial Hardship and Serious Harm to an LEA's Educational Program (§ 222.14 in the NPRM; § 222.17 in the final regulations)

Comment: Two commenters believed that the Secretary should change the measures used to determine undue financial hardship and serious harm to an LEA's educational program by removing the State maximum local real property tax rate and EAVPP measures, and using instead a State average local real property tax rate measure and a PPE measure. One of those commenters stated that a State maximum tax rate measure was not a good indicator of local effort because an LEA might be levying a tax rate significantly above the State average, but still fail to be at 90 percent of the State maximum. In addition, that commenter indicated that the State maximum measure should not be used because annual changes by the State to that measure could result in arbitrary results, and State limitations on tax increases could prohibit LEAs from being able to raise their tax levies sufficiently to meet the standard. The second commenter also believed that the State maximum measure would unfairly affect Indian districts that did not have a sufficient tax base or number of taxpayers to absorb a large tax increase.

As an alternative, both of these commenters suggested using a State average tax rate measure for all LEAs, instead of for coterminous districts only, because it would be a more consistent standard nationwide and a better measure of local effort. One of these commenters believed that it would be reasonable to consider that an LEA had met the standard if the LEA were levying a local real property tax that was at least 90 percent of the State average local real property tax rate. A third commenter stated, however, that the State average local real property tax rate, although it can be calculated, is not a good measure for ''unequalized'' States such as New York, and that a ''local contribution rate'' measure should be used instead.

Finally, two commenters believed that the EAVPP standard should be eliminated because it is too subject to manipulation, and is not a good measure of an LEA's financial capacity because it ignores other available revenues. If the EAVPP standard were retained, one of the commenters believed that some consideration also should be given to other financial resources of an LEA because some States make adjustments in State aid for LEAs with a low EAVPP.

The commenters suggested as a substitute for EAVPP that, in addition to the tax rate standard, a lower-than-average PPE standard generally should be applied, and that the Secretary also should consider an LEA's ability to raise additional revenues by increasing its local real property tax levy.

For coterminous districts, one commenter agreed with the NPRM provision that the PPE standard would be met if the LEA's APPE was no more than 125 percent of the State APPE. That commenter indicated that the same standard should be extended as well to heavily impacted Indian lands LEAs with little local real property tax revenue capacity. In addition, that commenter suggested that, for those special districts, the Secretary should retain the flexibility to adjust the tax rate percentage, or waive it altogether, if the Secretary believed that the educational program of the district otherwise would suffer.

Discussion: The Secretary agrees with the importance of using uniform and consistent measures that can be applied nationwide, and therefore eliminates the State maximum tax rate measure in these final regulations because only some States have maximum tax rates. The Secretary also agrees with the importance of considering all sources of revenue, and therefore eliminates the EAVPP measure. In addition, the Secretary agrees that good measures of an LEA's fiscal capacity are the LEA's local effort as measured by its local real property tax rate in comparison to the State average, and its per pupil expenditures in comparison to the State average, and therefore generally adopts those measures, combined with a minimum eligible overpayment balance, to determine whether repayment would result in undue financial hardship and serious harm to an LEA's educational program.

The Secretary also agrees, however, that it would be unfair to impose a local effort measure on districts that have no or little ability to raise local real property tax revenues in comparison with other LEAs in their State. Therefore, for all of those districts, the Secretary eliminates in these final regulations the use of a local effort measure, and will use instead the PPE measure that was proposed in the NPRM for coterminous districts (in addition to a minimum eligible overpayment balance). That PPE measure is that the LEA's APPE for the preceding year is no more than 125 percent of the State APPE.

The Secretary does not believe that a local contribution rate measure is an appropriate substitute for a local real property tax rate measure. For States in which tax rates are ''unequalized'' among school districts, the Secretary expects the State to equalize those rates before calculating a State average local real property tax rate in order to remove any distortion of the resulting average.

Finally, the Secretary agrees that it also would be a good measure of an LEA's fiscal capacity to consider the amount of additional revenues that could be raised by the LEA through an increase in taxes. However, that measure is not being adopted in these final regulations because it may not be possible to apply it consistently across States. The Department also believes that its application would impose a significant administrative burden on some LEAs and States, and on the Federal Government.

Changes: The State maximum local real property tax rate and EAVPP measures of fiscal burden are eliminated, and the following three measures adopted for all LEAs except those with no or little local real property tax revenues: (1) The LEA's eligible overpayments on the date of its request must total at least $10,000; (2) the LEA's local real property tax rate for current expenditures for the preceding year must be equal to or above the State average; and (3) the LEA's APPE for the preceding year must be less than the State APPE. The measure for coterminous LEAs is extended to apply as well to other LEAs with no or minimal local real property tax revenues. That standard (in addition to the total overpayment amount equalling or exceeding $10,000) is that the LEA's APPE for the preceding fiscal year does

not exceed 125 percent of the State APPE.

Amount Forgiven (§ 222.15 in the NPRM; § 222.18 in the final regulations)

Comment: The NPRM proposed to determine the amount of the overpayment to be forgiven depending on the amount of an LEA's closing balance the previous year in comparison with its previous year's total current expenditures (TCE). In cases where an LEA's carryover was more than five percent of its previous year's TCE, the NPRM provided that the LEA would repay all or a portion of the overpayment. One commenter stated that, for LEAs with strict State budget limits that are required to use closing balances to fund override expenditures because they have very few taxpayers, the Secretary in determining the overpayment amount to be forgiven should remove from the carryover balance the portion of that balance needed to fund the override expenditures.

Two commenters believed that a five percent carryover was too small, and that the allowed carryover should be increased to 25 percent to allow LEAs a cash reserve to cover three months operating expenses. In addition, one of those commenters indicated that, in determining the amount to be forgiven, the Secretary should adopt a method that takes into consideration an LEA's ability to raise taxes to repay the debt. Under the proposed method suggested by that comment, all eligible LEAs would repay the amount by which their closing balance exceeded 25 percent of the previous year's total current expenditures, and, in addition, all LEAs would repay the lesser of the amount of local revenue that could be raised with (1) a five percent tax increase, or (2) the maximum tax rate increase that legally could have been adopted.

Discussion: As noted in the preamble to the NPRM, the basis for using an LEA's closing balance, as expressed as a percentage of TCE, to demarcate the extent of forgiveness for eligible overpayments was intended to provide LEAs with reasonable minimal amounts to allow for the transition from one fiscal year to the next. In light of this limited purpose, the Secretary proposed the level of five percent of TCE. In response to comments that a sufficient cash reserve should be provided for a longer transitional period, however, the Secretary is increasing the size of the permitted reserve to 10 percent. While the Secretary considers this substantial enlargement of the permitted reserve to be consistent with the stated purpose, a further increase in the allowable carryover reserve to one that might be sufficient for a period of up to three months—one full quarter—would be inappropriate for the limited transitional purpose of this provision.

No special provision has been made in these final regulations for LEAs that use ending balances to fund override expenditures in States with budget limits. As noted, the purpose of this provision is to provide for a transition from one fiscal year to another. Creating an exception allowing larger reserves solely for LEAs that fund subsequent year operations through overrides funded with ending balances would not be consistent with the purpose of the provision, and would be unfair to other LEAs that are not subject to budget limits but nonetheless use their ending balances to fund operations in the ensuing year. In addition, the Secretary believes that the doubling in size of the allowable carryover reserve should help address the concerns of any district that uses ending balances to fund override spending.

Finally, the allowable carryover reserve is considered only in determining the amount of the overpayment that will be forgiven. The Secretary would not expect every district to use all of its closing balance in excess of the allowable cash reserve to satisfy immediately the unforgiven portion of its overpayments. As has been the practice in the past, in appropriate cases, repayment may be made through administrative offset, or a repayment schedule can be negotiated to provide for repayment over time so as not to disrupt the educational services provided by the LEA.

Changes: The allowed carryover amount, in determining how much of the eligible overpayments are forgiven, is increased from five percent to 10 percent of the previous year's total current expenditures.

Subpart F—Payments to Local Educational Agencies for Children With Severe Disabilities Under Section 8003(g) of the Act

Definitions (§ 222.80)

Comment: Two commenters indicated that the regulations should include a definition of the statutory term ''compassionate post assignment,'' and that the definition of the term should be obtained from the Department of Defense. One of those commenters suggested that, absent a definition from the Department of Defense, the Department should consider defining the term based upon the enrollment of military students with disabilities. Specifically, the commenter suggested that the term could be defined as meaning an assignment to any LEA with an enrollment of children with disabilities that exceeds the State average, and where at least 25 percent of those children are military dependents.

Discussion: As stated in the NPRM, the Department has been unable to obtain a standard definition of the term ''compassionate post assignment.'' In the absence of a standard or official definition of the term in Department of Defense statutes, regulations, or other official policy guidance, the Department has determined that it would be inappropriate to develop its own definition of the term. The commenter's suggested definition of the term as any LEA with an above-State average enrollment of children with disabilities, 25 percent of whom are military dependents, may in practical effect exclude some LEAs that do not meet the commenter's standard, but that do meet the section 8003(g) statutory standard of serving two or more severely disabled students who each have a parent in the uniformed services. For this reason, the Department believes that it would be inappropriate to adopt the commenter's suggestion.

Changes: None.

Subpart G—Special Provisions for Local Educational Agencies That Claim Children Residing on Indian Lands

Withholding and Related Procedures for Indian Policies and Procedures (§§ 222.114–222.122)

Comment: One commenter approved of the clarity of the proposed enforcement regulations in this section but asked whether a school district claiming children residing on Indian lands under section 8003(a)(1)(C) of the Act could choose to count the children in another category, thereby waiving the 1.25 payment weight and avoiding the Indian policies and procedures (IPP) requirements under section 8004 of the Act, which are associated with children residing on Indian lands.

Discussion: A school district with a pending IPP enforcement issue that has claimed children residing on Indian lands under section 8003(a)(1)(C) but refused to comply with the IPP requirements cannot avoid the IPP enforcement provisions, including having its funds withheld, by deciding not to claim the children on an amended or future application. However, there is no provision in the Impact Aid statute that requires a school district to claim children residing on Indian lands under section 8003(a)(1)(C), even if the children

would meet the eligibility requirements for the increased payment weight associated with that section.

While a school district may choose to claim the children in another payment category, such as under section 8003(a)(1)(F) of the Act, in order to circumvent or avoid the special provisions relating to school districts claiming children residing on Indian lands, the Secretary does not support or endorse such an action. Reclassifying the children in this way clearly would result in the school district receiving a lesser Impact Aid payment than it otherwise would receive. Most importantly, however, the Secretary believes that the requirements of section 8004 may be beneficial in ensuring the equal participation of children living on Indian lands in a school district's programs and activities and affording parents and Indian tribes an opportunity to present their views on those programs and activities. Therefore, the Secretary encourages school districts to meet the spirit and the purpose of the requirements associated with section 8004, which would also enable them to receive the higher payments for children residing on Indian lands.

Changes: None.

Secretary's Authority To Withhold Payments (§ 222.115)

Comment: Another commenter asked for clarification of the relationship between the proposed language in § 222.115(b) and § 222.113(c).

Discussion: Section 222.115(b) provides that the Assistant Secretary withholds payments to an LEA after an IPP hearing where the LEA rejects the final determination of the Assistant Secretary or the LEA fails to implement the required remedy within the time established and the Assistant Secretary determines that the required remedy will not be undertaken by the LEA even if the LEA is granted a reasonable extension of time. Section 222.113(c) provides that the Assistant Secretary's final determination under § 222.113(a) is the final action for the Department concerning the complaint and is subject to judicial review. When read together, these sections mean that if a school district appeals a final determination, the Assistant Secretary is not precluded from withholding the funds in accordance with the regulations while the appeal is pending.

Changes: None.

Subpart K—Determinations Under Section 8009 of the Act

Treatment of State Aid Under Section 8009 of the Act (§ 222.161)

Comment: One commenter stated that the definition of ''total local tax revenues'' should be clarified by adding the word ''tax'' after the word ''including.''

Discussion: ''Local tax revenues'' as defined in § 222.161(c) clearly includes the proceeds from various types of taxes, and does not include other types of revenues.

Changes: In the definition of ''total local tax revenues,'' the word ''tax'' is added after the word ''including.''

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collections of information in these final regulations is displayed at the end of the affected sections of the regulations.

List of Subjects in 34 CFR Part 222

Education, Education of children with disabilities, Elementary and secondary education, Federally affected areas, Grant programs—education, Indians—education, Public housing, Reports and recordkeeping requirements, School construction.

Dated: June 26, 1997.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.041, Impact Aid)

The Secretary amends part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—IMPACT AID PROGRAM

1. The authority citation for Part 222 continues to read as follows:

Authority: 20 U.S.C. 7701–7714, unless otherwise noted.

§§ 222.7, 222.9, 222.10 and 222.11 [Amended]

2. In the authority citation for the following sections, remove ''1221e-3,'':

§ 222.7.
§ 222.9.
§ 222.10.
§ 222.11.

§§ 222.50, 222.94, 222.95, 222.103, 222.104, 222.108–222.113 [Amended]

3. In the authority citation for the following sections, remove ''1221e-3(a)(1),'':

§ 222.50.
§ 222.94.
§ 222.95.
§ 222.103.
§ 222.104.
§ 222.108.
§ 222.109.
§ 222.110.
§ 222.111.
§ 222.112.
§ 222.113.

4. Section 222.4 is revised to read as follows:

§ 222.4 How does the Secretary determine when an application is timely filed?

(a) To be timely filed under § 222.3, an application must be received by the Secretary, or mailed, on or before the applicable filing date.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(Authority: 20 U.S.C. 7705)

Note to Paragraph (b)(1): The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

§ 222.11 [Amended]

5. In § 222.11, the introductory text is amended by removing ''Except as otherwise provided in section 8012'', and by adding in its place ''Except as otherwise provided in §§ 222.12–222.18,''.

§ 222.13 [Redesignated as § 222.19]

6. Section 222.13 is redesignated as § 222.19, and new §§ 222.12–222.18 are added to read as follows:

§ 222.12 What overpayments are eligible for forgiveness under section 8012 of the Act?

(a) The Secretary considers as eligible for forgiveness under section 8012 of the Act (''eligible overpayment'') any overpayment amount that is more than an LEA was eligible to receive for a particular fiscal year under Public Law 81–874, Public Law 81–815, or the Act (except for the types of overpayments listed in § 222.13), and that—

(1) Remains owing on or after July 31, 1997;

(2) Is the subject of a written request for forgiveness filed by the LEA before July 31, 1997; or

(3) Is the subject of a pending, timely written request for an administrative hearing or reconsideration, and has not previously been reviewed under §§ 222.12–222.18.

(b) The Secretary applies §§ 222.14–222.18 in forgiving, in whole or part, an LEA's obligation to repay an eligible overpayment that resulted from error either by the LEA or the Secretary.

(Authority: 20 U.S.C. 7712)

§ 222.13 What overpayments are not eligible for forgiveness under section 8012 of the Act?

The Secretary does not consider the following overpayments to be eligible for forgiveness under section 8012 of the Act:

(a) Any overpayment under section 7 of Public Law 81–874 or section 16 of Public Law 81–815.

(b) An amount received by an LEA, as determined under section 8003(g) of the Act (payments to LEAs for certain federally connected children with severe disabilities, implemented in subpart F of this part), that exceeds the LEA's maximum basic support payment under section 8003(b) of the Act.

(c) Any overpayment caused by an LEA's failure to expend or account for funds properly in accordance with the following laws and regulations:

(1) Section 8003(d) of the Act (implemented in subpart D of this part) or section 3(d)(2)(C) of Public Law 81–874 for certain federally connected children with disabilities.

(2) Section 8003(g) of the Act.

(Authority: 20 U.S.C. 7712)

§ 222.14 What requirements must a local educational agency meet for an eligible overpayment to be forgiven in whole or part?

The Secretary forgives an eligible overpayment, in whole or part as described in § 222.18, if—

(a) An LEA submits to the Department's Impact Aid Program office a written request for forgiveness by the later of—

(1) Thirty days from the LEA's initial receipt of a written notice of the overpayment; or

(2) September 2, 1997;

(b) The LEA submits to the Department's Impact Aid Program office the information and documentation described in § 222.16 by the deadlines described in paragraph (a) of this section, or other time limit established in writing by the Secretary due to lack of availability of the information and documentation; and

(c) The Secretary determines under § 222.17 that—

(1) In the case either of an LEA's or the Department's error, repayment of the LEA's total eligible overpayments will result in an undue financial hardship on the LEA and seriously harm the LEA's educational program; or

(2) In the case of the Department's error, determined on a case-by-case basis, repayment would be manifestly unjust (''manifestly unjust repayment exception'').

§ 222.15 How are the filing deadlines affected by requests for other forms of relief?

Unless the Secretary (or the Secretary's delegatee) extends the applicable time limit in writing—

(a) A request for forgiveness of an overpayment under § 222.14 does not extend the time within which an applicant must file a request for an administrative hearing under § 222.151; and

(b) A request for an administrative hearing under § 222.151, or for reconsideration under § 222.152, does not extend the time within which an applicant must file a request for forgiveness under § 222.14.

(Authority: 20 U.S.C. 7712)

§ 222.16 What information and documentation must an LEA submit for an eligible overpayment to be considered for forgiveness?

(a) Every LEA requesting forgiveness must submit, within the time limits established under § 222.14(b), the following information and documentation for the fiscal year immediately preceding the date of the forgiveness request (''preceding fiscal year''):

(1) A copy of the LEA's annual financial report to the State.

(2) The LEA's local real property tax rate for current expenditure purposes, as described in § 222.17(b).

(3) The average local real property tax rate of all LEAs in the State.

(4) The average per pupil expenditure (APPE) of the LEA, calculated by dividing the LEA's aggregate current expenditures by the total number of children in average daily attendance for whom the LEA provided a free public education.

(5) The APPE of the State, as defined in section 8013 of the ESEA.

(b) An LEA requesting forgiveness under § 222.14(c)(2) (manifestly unjust repayment exception), or § 222.17(a)(3) (no present or prospective ability to repay), also must submit written information and documentation in specific support of its forgiveness request under those provisions within the time limits established under § 222.14(b).

(Authority: 20 U.S.C. 7712)

§ 222.17 How does the Secretary determine undue financial hardship and serious harm to a local educational agency's educational program?

(a) The Secretary determines that repayment of an eligible overpayment will result in undue financial hardship on an LEA and seriously harm its educational program if the LEA meets the requirements in paragraph (a)(1), (2), or (3) of this section.

(1) An LEA other than an LEA described in paragraphs (a)(2) and (3) of this section meets the requirements of paragraph (a) of this section if—

(i) The LEA's eligible overpayments on the date of its request total at least $10,000;

(ii) The LEA's local real property tax rate for current expenditure purposes, for the preceding fiscal year, is equal to or higher than the State average local real property tax rate for that preceding fiscal year; and

(iii) The LEA's average per pupil expenditure (APPE) (as described in § 222.16(a)(4)) for the preceding fiscal year is lower than the State APPE (as described in § 222.16(a)(5)) for that preceding fiscal year.

(2) The following LEAs qualify under paragraph (a) of this section if they meet the requirements in paragraph (a)(1)(i) of this section and their APPE (as described in § 222.16(a)(4)) for the preceding fiscal year does not exceed 125 percent of the State APPE (as described in § 222.16(a)(5)) for that preceding fiscal year:

(i) An LEA with boundaries that are the same as a Federal military installation.

(ii) Other LEAs with no local real property tax revenues, or with minimal local real property tax revenues per pupil due to substantial amounts of Federal property in the LEA as compared with the average amount of those revenues per pupil for all LEAs in the State.

(3) An LEA qualifies under paragraph (a) of this section if neither the successor nor the predecessor LEA has the present or prospective ability to repay the eligible overpayment.

(b) The Secretary uses the following methods to determine a tax rate for the purposes of paragraph (a)(1)(ii) of this section:

(1) If an LEA is fiscally independent, the Secretary uses actual tax rates if all the real property in the taxing jurisdiction of the LEA is assessed at the same percentage of true value. In the

alternative, the Secretary computes a tax rate for fiscally independent LEAs by using the methods described in §§ 222.67–222.69.

(2) If an LEA is fiscally dependent, the Secretary imputes a tax rate using the method described in § 222.70(b).

(Authority: 20 U.S.C. 7712)

§ 222.18 What amount does the Secretary forgive?

For an LEA that meets the requirements of § 222.14(a) (timely filed forgiveness request) and § 222.14(b) (timely filed information and documentation), the Secretary forgives an eligible overpayment as follows:

(a) *Forgiveness in whole.* The Secretary forgives the eligible overpayment in whole if the Secretary determines that the LEA meets—

(1) The requirements of § 222.17 (undue financial hardship), and the LEA's current expenditure closing balance for the LEA's fiscal year immediately preceding the date of its forgiveness request (''preceding fiscal year'') is ten percent or less of its total current expenditures (TCE) for that year; or

(2) The manifestly unjust repayment exception in § 222.14(c)(2).

(b) *Forgiveness in part.* (1) The Secretary forgives the eligible overpayment in part if the Secretary determines that the LEA meets the requirements of § 222.17 (undue financial hardship), and the LEA's preceding fiscal year's current expenditure closing balance is more than ten percent of its TCE for that year.

(2) For an eligible overpayment that is forgiven in part, the Secretary—

(i) Requires the LEA to repay the amount by which the LEA's preceding fiscal year's current expenditure closing balance exceeded ten percent of its preceding fiscal year's TCE (''calculated repayment amount''); and

(ii) Forgives the difference between the calculated repayment amount and the LEA's total overpayments.

(3) For the purposes of this section, ''current expenditure closing balance'' means an LEA's closing balance before any revocable transfers to non-current expenditure accounts, such as capital outlay or debt service accounts.

EXAMPLE: An LEA that timely requests forgiveness has two overpayments of which portions remain owing on the date of its request—one of $200,000 and one of $300,000. Its preceding fiscal year's closing balance is $250,000 (before a revocable transfer to a capital outlay or debt service account); and 10 percent of its TCE for the preceding fiscal year is $150,000.

The Secretary calculates the amount that the LEA must repay by determining the amount by which the preceding fiscal year's closing balance exceeds 10 percent of the preceding year's TCE. This calculation is made by subtracting 10 percent of the LEA's TCE ($150,000) from the closing balance ($250,000), resulting in a difference of $100,000 that the LEA must repay. The Secretary then totals the eligible overpayment amounts ($200,000 + $300,000), resulting in a total amount of $500,000. The Secretary subtracts the calculated repayment amount ($100,000) from the total of the two overpayment balances ($500,000), resulting in $400,000 that the Secretary forgives.

(Authority: 20 U.S.C. 7712)

7. Section 222.22 is amended by revising paragraphs (c) and (d) to read as follows:

§ 222.22 How does the Secretary treat compensation from Federal activities for purposes of determining eligibility and payments?

* * * * *

(c) If an LEA described in paragraph (a) of this section received revenue described in paragraph (b)(1) of this section during the preceding fiscal year that is less than the maximum payment amount calculated under section 8002(b)(2) for the fiscal year for which the LEA seeks assistance, the Secretary reduces that maximum payment amount by the amount of that revenue received by the LEA.

(d) For purposes of this section, the amount of revenue that an LEA receives during the previous fiscal year from activities conducted on Federal property does not include the following:

(1) Payments received by the agency from the Secretary of Defense to support—

(i) The operation of a domestic dependent elementary or secondary school; or

(ii) The provision of a free public education to dependents of members of the Armed Forces residing on or near a military installation.

(2) Federal payments-in-lieu-of-taxes (PILOTs or PILTs), including PILTs for Federal entitlement lands authorized by Public Law 97–258, 31 U.S.C. 6901–6906.

* * * * *

8. A new § 222.23 is added to read as follows:

§ 222.23 How does a local official determine the aggregate assessed value of eligible Federal property for the purpose of a local educational agency's section 8002 payment?

(a) The aggregate assessed value of eligible Federal property for the purpose of an LEA's section 8002 payment must be determined, by a local official responsible for assessing the value of real property located in the jurisdiction of the LEA for the purpose of levying a property tax, as follows:

(1) The local official first determines a fair market value (FMV) for the eligible Federal property in each Federal installation or other federally owned property (e.g., Federal forest), based on the highest and best use of taxable properties adjacent to the eligible Federal property.

(2) The local official then determines a section 8002 assessed value for each Federal installation or federally owned property by adjusting the FMV established in paragraph (a)(1) of this section by any percentage, ratio, index, or other factor that the official would use, if the eligible Federal property were taxable, to determine its assessed value for the purpose of generating local real property tax revenues for current expenditures. In making this adjustment, the official may assume that there was a transfer of ownership of the eligible Federal property for the year for which the section 8002 assessed value is being determined.

(3) The local official then calculates the aggregate section 8002 assessed value for all eligible Federal property in the LEA by adding the section 8002 assessed values for each different Federal installation or federally owned property determined in paragraph (a)(2) of this section.

EXAMPLE: Two different Federal properties are located within an LEA—a Federal forest, and a naval facility. Based upon the highest and best use of taxable properties adjacent to the eligible Federal property, the local assessor establishes a FMV for the Federal forest of $1 million (woodland), and a FMV for the naval facility of $3 million (50 percent residential and 50 percent commercial/industrial). Assessed values in that taxing jurisdiction are determined by multiplying the FMV of property by an assessment ratio—the assessment ratio for woodland property is 30 percent of FMV, for residential 60 percent of FMV, and for commercial 75 percent of FMV.

To determine the section 8002 assessed value of the Federal forest, the assessor multiplies the FMV for that property ($1,000,000) by 30 percent (the assessment ratio for woodland property), resulting in a section 8002 assessed value of $300,000.

To determine the section 8002 assessed value for the naval facility, the assessor first must determine the portion of the total FMV attributable to each property type if that portion has not already been established. To make this determination for the residential portion, the assessor could multiply the total FMV ($3,000,000) for the naval facility by 50 percent (the portion of residential property), resulting in a $1.5 million FMV for the residential property. To determine a section 8002 assessed value for this residential portion, the assessor then would multiply the $1.5 million by 60 percent (assessment ratio

for residential property), resulting in $900,000.

Similarly, to determine the portion of the FMV for the naval facility attributable to the commercial/industrial property, the assessor could multiply the total FMV ($3,000,000) by 50 percent (the portion of commercial/industrial property), resulting in $1.5 million. To determine the section 8002 assessed value for this commercial/industrial portion, the official then would multiply the $1.5 million by 75 percent (the assessment ratio for commercial/industrial property), resulting in $1,025,000. The assessor then must add the section 8002 assessed value figures for the residential portion ($900,000) and for the commercial/industrial portion ($1,025,000), resulting in a total section 8002 assessed value for the entire naval facility of $1,925,000.

Finally, the assessor determines the aggregate section 8002 assessed value for the LEA by adding the section 8002 assessed value for the Federal forest ($300,000), and the section 8002 assessed value for the naval facility ($1,925,000), resulting in an aggregate assessed value of $2,325,000.

(b) For the purpose of this section, the terms listed below have the following meanings:

(1) *Adjacent* means next to or close to the eligible Federal property. In most cases, this will be the closest taxable parcels.

(2)(i) *Highest and best use* of a parcel of adjacent property means the FMV of that parcel determined based upon a ''highest and best use'' standard in accordance with State or local law or guidelines if available. To the extent that State or local law or guidelines are not available, ''highest and best use'' generally will be a reasonable fair market value based upon the current use of those properties. However, the local official may also consider the most developed and profitable use for which the adjacent taxable property is physically adaptable *and* for which there is a need or demand for that use in the near future.

(ii) A local official may not base the ''highest and best use'' value of adjacent taxable property upon potential uses that are speculative or remote.

(iii) If the taxable properties adjacent to the eligible Federal property have different highest and best uses, these different uses must enter into the local official's determination of the FMV of the eligible Federal property under paragraph (a)(1) of this section.

EXAMPLE: If a portion of a Federal installation to be valued has road or highway frontage with adjacent properties that are used for residential and commercial purposes, but the rest of the Federal installation is rural and vacant with adjacent properties that are agricultural, the local official must take into consideration the various uses of the adjacent properties (residential, commercial, and agricultural) in determining the FMV of the Federal property under paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 7702)

9. Section 222.36 is amended by revising paragraph (b) (1) and (2) to read as follows:

§ 222.36 What minimum number of federally connected children must a local educational agency have to receive a payment on behalf of those children under section 8003 (b) and (e)?

* * * * *

(b) * * *

(1) 1,000 in ADA; or

(2) 10 percent of the total number of children in ADA.

* * * * *

10. Subpart F (Payments to Local Educational Agencies for Children with Severe Disabilities under Section 8003(g) of the Act), consisting of §§ 222.80 through 222.85, is added to read as follows:

Subpart F—Payments to Local Educational Agencies for Children With Severe Disabilities Under Section 8003(g) of the Act

Sec.

222.80 What definitions apply to this subpart?
222.81 What requirements must a local educational agency meet to be eligible for a payment under section 8003(g) of the Act?
222.82 How does the Secretary calculate the total amount of funds available for payments under section 8003(g)?
222.83 How does an eligible local educational agency apply for a payment under section 8003(g)?
222.84 How does the Secretary calculate payments under section 8003(g) for eligible local educational agencies?
222.85 How may a local educational agency use funds that it receives under section 8003(g)?

Subpart F—Payments to Local Educational Agencies for Children With Severe Disabilities Under Section 8003(g) of the Act

§ 222.80 What definitions apply to this subpart?

(a) The definitions in §§ 222.2 and 222.50 apply to this subpart.

(b) In addition, the following term applies to this subpart:

Children with severe disabilities means children with disabilities who because of the intensity of their physical, mental, or emotional problems need highly specialized education, social, psychological, and medical services in order to maximize their full potential for useful and meaningful participation in society and for self-fulfillment. The term includes those children with disabilities with severe emotional disturbance (including schizophrenia), autism, severe and profound mental retardation, and those who have two or more serious disabilities such as deaf-blindness, mental retardation and blindness, and cerebral-palsy and deafness.

(Authority: 20 U.S.C. 1400 *et seq.*, 7703(g))

§ 222.81 What requirements must a local educational agency meet to be eligible for a payment under section 8003(g) of the Act?

An LEA is eligible for a payment under section 8003(g) of the Act if it—

(a) Is eligible for and receives a payment under section 8003(d) of the Act for children identified in paragraph (b) of this section and meets the requirements of §§ 222.52 and 222.83(b) and (c); and

(b) Incurs costs of providing a free appropriate public education to at least two children with severe disabilities whose educational program is being provided by an entity outside the schools of the LEA, and who each have a parent on active duty in the uniformed services.

(Authority: 20 U.S.C. 1400 *et seq.*, 7703(a), (d), (g))

§ 222.82 How does the Secretary calculate the total amount of funds available for payments under section 8003(g)?

(a) In any fiscal year in which Federal funds other than funds available under the Act are provided to an LEA to meet the purposes of the Act, the Secretary—

(1) Calculates the sum of the amount of other Federal funds provided to an LEA to meet the purposes of the Act and the amount of the payment that the LEA received for that fiscal year under section 8003(b) of the Act; and

(2) Determines whether the sum calculated under paragraph (a)(1) of this section exceeds the maximum basic support payment for which the LEA is eligible under section 8003(b), and, if so, subtracts from the amount of any payment received under section 8003(b), any amount in excess of the maximum basic support payment for which the LEA is eligible.

(b) The sum of all excess amounts determined in paragraph (a)(2) of this section is available for payments under section 8003(g) to eligible LEAs.

(Authority: 20 U.S.C. 7703(b), (g))

§ 222.83 How does an eligible local educational agency apply for a payment under section 8003(g)?

(a) In fiscal years in which funds are available for payments under section 8003(g) of the Act, the Secretary provides notice to all potentially eligible LEAs that funds will be available.

(b) An LEA applies for a payment under section 8003(g) by submitting to

the Secretary documentation detailing the total costs to the LEA of providing a free appropriate public education to the children identified in § 222.81, during the LEA's preceding fiscal year, including the following:

(1) For the costs of the outside entity providing the educational program for those children, copies of all invoices, vouchers, tuition contracts, and other similar documents showing the signature of an official or authorized employee of the outside entity; and

(2) For any additional costs (such as transportation) of the LEA related to providing an educational program for those children in an outside entity, copies of invoices, check receipts, contracts, and other similar documents showing the signature of an official or authorized employee of the LEA.

(c) An LEA applying for a payment must submit to the Secretary the information required under paragraph (b) of this section within 60 days of the date of the notice that funds will be available.

(Approved by the Office of Management and Budget under control number 1810–0036)
(Authority: 20 U.S.C. 7703(g)(2))

§ 222.84 How does the Secretary calculate payments under section 8003(g) for eligible local educational agencies?

For any fiscal year in which the Secretary has determined, under § 222.82, that funds are available for payments under section 8003(g) of the Act, the Secretary calculates payments to eligible LEAs under section 8003(g) as follows:

(a) For each eligible LEA, the Secretary subtracts an amount equal to that portion of the payment the LEA received under section 8003(d) of the Act for that fiscal year, attributable to children described in § 222.81, from the LEA's total costs of providing a free appropriate public education to those children, as submitted to the Secretary pursuant to § 222.83(b). The remainder is the amount that the LEA is eligible to receive under section 8003(g).

(b) If the total of the amounts for all eligible LEAs determined in paragraph (a) of this section is equal to or less than the amount of funds available for payment as determined in § 222.82, the Secretary provides each eligible LEA with the entire amount that it is eligible to receive, as determined in paragraph (a) of this section.

(c) If the total of the amounts for all eligible LEAs determined in paragraph (a) of this section exceeds the amount of funds available for payment as determined in § 222.82, the Secretary ratably reduces payments under section 8003(g) to eligible LEAs.

(d) If the total of the amounts for all eligible LEAs determined in paragraph (a) of this section is less than the amount of funds available for payment as determined in § 222.82, the Secretary pays the remaining amount to LEAs under section 8003(d). An LEA that receives such a payment shall use the funds for expenditures in accordance with the requirements of section 8003(d) and subpart D of this part.

(Authority: 20 U.S.C. 7703 (d) and (g))

§ 222.85 How may a local educational agency use funds that it receives under section 8003(g)?

An LEA that receives a payment under section 8003(g) of the Act shall use the funds for reimbursement of costs reported in the application that it submitted to the Secretary under § 222.83(b).

(Authority: 20 U.S.C. 7703(g)(2))

9. Section 222.95 is amended by revising the paragraph (g) introductory text, and adding an OMB control number before the authority citation, to read as follows:

§ 222.95 How are Indian policies and procedures reviewed to ensure compliance with the requirements in section 8004(a) of the Act?

* * * * *

(g) An LEA that amends its IPPs shall, within 30 days, send a copy of the amended IPPs to—

* * * * *

(Approved by the Office of Management and Budget under control number 1810–0036)

12. New §§ 222.114 through 222.122 are added to subpart G of this part, with a heading preceding them, to read as follows:

Withholding and Related Procedures for Indian Policies and Procedures

222.114 How does the Assistant Secretary implement the provisions of this subpart?
Sec. 222.115 When does the Assistant Secretary withhold payments from a local educational agency under this subpart?
222.116 How are withholding procedures initiated under this subpart?
222.117 What procedures are followed after the Assistant Secretary issues a notice of intent to withhold payments?
222.118 How are withholding hearings conducted in this subpart?
222.119 What is the effect of withholding under this subpart?
222.120 When is a local educational agency exempt from withholding of payments?
222.121 How does the affected Indian tribe or tribes request that payments to a local educational agency not be withheld?
222.122 What procedures are followed if it is determined that the local educational agency's funds will not be withheld under this subpart?
222.123–222.129 [Reserved]

Withholding and Related Procedures for Indian Policies and Procedures

§ 222.114 How does the Assistant Secretary implement the provisions of this subpart?

The Assistant Secretary implements section 8004 of the Act and this subpart through such actions as the Assistant Secretary determines to be appropriate, including the withholding of funds in accordance with §§ 222.115–222.122, after affording the affected LEA, parents, and Indian tribe or tribes an opportunity to present their views.

(Authority: 20 U.S.C. 7704 (d)(2), (e) (8)–(9))

§ 222.115 When does the Assistant Secretary withhold payments from a local educational agency under this subpart?

Except as provided in § 222.120, the Assistant Secretary withholds payments to an LEA if—

(a) The Assistant Secretary determines it is necessary to enforce the requirements of section 8004 of the Act or this subpart; or

(b) After a hearing has been conducted under section 8004(e) of the Act and §§ 222.102–222.113 (IPP hearing)—

(1) The LEA rejects the final determination of the Assistant Secretary; or

(2) The LEA fails to implement the required remedy within the time established and the Assistant Secretary determines that the required remedy will not be undertaken by the LEA even if the LEA is granted a reasonable extension of time.

(Authority: 20 U.S.C. 7704 (a), (b), (d)(2), (e)(8)–(9))

§ 222.116 How are withholding procedures initiated under this subpart?

(a) If the Assistant Secretary decides to withhold an LEA's funds, the Assistant Secretary issues a written notice of intent to withhold the LEA's payments.

(b) In the written notice, the Assistant Secretary—

(1) Describes how the LEA failed to comply with the requirements at issue; and

(2)(i) Advises an LEA that has participated in an IPP hearing that it may request, in accordance with § 222.117(c), that its payments not be withheld; or

(ii) Advises an LEA that has not participated in an IPP hearing that it may request a withholding hearing in accordance with § 222.117(d).

(c) The Assistant Secretary sends a copy of the written notice of intent to withhold payments to the LEA and the affected Indian tribe or tribes by certified mail with return receipt requested.

(Authority: 20 U.S.C. 7704 (a), (b), (d)(2), and (e) (8)–(9))

§ 222.117 What procedures are followed after the Assistant Secretary issues a notice of intent to withhold payments?

(a) The withholding of payments authorized by section 8004 of the Act is conducted in accordance with section 8004 (d)(2) or (e) (8)–(9) of the Act and the regulations in this subpart.

(b) An LEA that receives a notice of intent to withhold payments from the Assistant Secretary is not entitled to an Impact Aid hearing under the provisions of section 8011 of the Act and subpart J of this part.

(c) After an IPP hearing. (1) An LEA that rejects or fails to implement the final determination of the Assistant Secretary after an IPP hearing has 10 days from the date of the LEA's receipt of the written notice of intent to withhold funds to provide the Assistant Secretary with a written explanation and documentation in support of the reasons why its payments should not be withheld. The Assistant Secretary provides the affected Indian tribe or tribes with an opportunity to respond to the LEA's submission.

(2) If after reviewing an LEA's written explanation and supporting documentation, and any response from the Indian tribe or tribes, the Assistant Secretary determines to withhold an LEA's payments, the Assistant Secretary notifies the LEA and the affected Indian tribe or tribes of the withholding determination in writing by certified mail with return receipt requested prior to withholding the payments.

(3) In the withholding determination, the Assistant Secretary states the facts supporting the determination that the LEA failed to comply with the legal requirements at issue, and why the provisions of § 222.120 (provisions governing circumstances when an LEA is exempt from the withholding of payments) are inapplicable. This determination is the final decision of the Department.

(d) An LEA that has not participated in an IPP hearing.

(1) An LEA that has not participated in an IPP hearing has 30 days from the date of its receipt of the Assistant Secretary's notice of intent to withhold funds to file a written request for a withholding hearing with the Assistant Secretary. The written request for a withholding hearing must—

(i) Identify the issues of law and facts in dispute; and

(ii) State the LEA's position, together with the pertinent facts and reasons supporting that position.

(2) If the LEA's request for a withholding hearing is accepted, the Assistant Secretary sends written notification of acceptance to the LEA and the affected Indian tribe or tribes and forwards to the hearing examiner a copy of the Assistant Secretary's written notice, the LEA's request for a withholding hearing, and any other relevant documents.

(3) If the LEA's request for a withholding hearing is rejected, the Assistant Secretary notifies the LEA in writing that its request for a hearing has been rejected and provides the LEA with the reasons for the rejection.

(4) The Assistant Secretary rejects requests for withholding hearings that are not filed in accordance with the time for filing requirements described in paragraph (d)(1) of this section. An LEA that files a timely request for a withholding hearing, but fails to meet the other filing requirements set forth in paragraph (d)(1) of this section, has 30 days from the date of receipt of the Assistant Secretary's notification of rejection to submit an acceptable amended request for a withholding hearing.

(e) If an LEA fails to file a written explanation in accordance with paragraph (c) of this section, or a request for a withholding hearing or an amended request for a withholding hearing in accordance with paragraph (d) of this section, the Secretary proceeds to take appropriate administrative action to withhold funds without further notification to the LEA.

(Authority: 20 U.S.C. 7704 (a), (b), (d)(2), and (e) (8)–(9))

§ 222.118 How are withholding hearings conducted in this subpart?

(a) *Appointment of hearing examiner.* Upon receipt of a request for a withholding hearing that meets the requirements of § 222.117(d), the Assistant Secretary requests the appointment of a hearing examiner.

(b) *Time and place of the hearing.* Withholding hearings under this subpart are held at the offices of the Department in Washington, DC, at a time fixed by the hearing examiner, unless the hearing examiner selects another place based upon the convenience of the parties.

(c) *Proceeding.* (1) The parties to the withholding hearing are the Assistant Secretary and the affected LEA. An affected Indian tribe is not a party, but, at the discretion of the hearing examiner, may participate in the hearing and present its views on the issues relevant to the withholding determination.

(2) The parties may introduce all relevant evidence on the issues stated in the LEA's request for withholding hearing or other issues determined by the hearing examiner during the proceeding. The Assistant Secretary's notice of intent to withhold, the LEA's request for a withholding hearing, and all amendments and exhibits to those documents, must be made part of the hearing record.

(3) Technical rules of evidence, including the Federal Rules of Evidence, do not apply to hearings conducted under this subpart, but the hearing examiner may apply rules designed to assure production of the most credible evidence available, including allowing the cross-examination of witnesses.

(4) Each party may examine all documents and other evidence offered or accepted for the record, and may have the opportunity to refute facts and arguments advanced on either side of the issues.

(5) A transcript must be made of the oral evidence unless the parties agree otherwise.

(6) Each party may be represented by counsel.

(7) The hearing examiner is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(d) *Filing requirements.* (1) All written submissions must be filed with the hearing examiner by hand-delivery, mail, or facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(2) If agreed upon by the parties, a party may serve a document upon the other party by facsimile transmission.

(3) The filing date for a written submission under this subpart is the date the document is—

(i) Hand-delivered;

(ii) Mailed; or

(iii) Sent by facsimile transmission.

(4) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was timely received by the hearing examiner.

(5) Any party filing a document by facsimile transmission must file a follow-up hard copy by hand-delivery or mail within a reasonable period of time.

(e) *Procedural rules.* (1) If the hearing examiner determines that no dispute exists as to a material fact or that the resolution of any disputes as to material facts would not be materially assisted by

oral testimony, the hearing examiner shall afford each party an opportunity to present its case—

(i) In whole or in part in writing; or

(ii) In an informal conference after affording each party sufficient notice of the issues to be considered.

(2) With respect to withholding hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the hearing examiner shall afford to each party—

(i) Sufficient notice of the issues to be considered at the hearing;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(f) *Decision of the hearing examiner.* (1) The hearing examiner—

(i) Makes written findings and an initial withholding decision based upon the hearing record; and

(ii) Forwards to the Secretary, and mails to each party and to the affected Indian tribe or tribes, a copy of the written findings and initial withholding decision.

(2) A hearing examiner's initial withholding decision constitutes the Secretary's final withholding decision without any further proceedings unless—

(i) Either party to the withholding hearing, within 30 days of the date of its receipt of the initial withholding decision, requests the Secretary to review the decision and that request is granted; or

(ii) The Secretary otherwise determines, within the time limits stated in paragraph (g)(2)(ii) of this section, to review the initial withholding decision.

(3) When an initial withholding decision becomes the Secretary's final decision without any further proceedings, the Department notifies the parties and the affected Indian tribe or tribes of the finality of the decision.

(g) *Administrative appeal of an initial decision.* (1)(i) Any party may request the Secretary to review an initial withholding decision.

(ii) A party must file this request for review within 30 days of the party's receipt of the initial withholding decision.

(2) The Secretary may—

(i) Grant or deny a timely request for review of an initial withholding decision; or

(ii) Otherwise determine to review the decision, so long as that determination is made within 45 days of the date of receipt of the initial decision by the Secretary.

(3) The Secretary mails to each party and the affected Indian tribe or tribes, by certified mail with return receipt requested, written notice of—

(i) The Secretary's action granting or denying a request for review of an initial decision; or

(ii) The Secretary's determination to review an initial decision.

(h) *Secretary's review of an initial withholding decision.* (1) When the Secretary reviews an initial withholding decision, the Secretary notifies each party and the affected Indian tribe or tribes in writing, by certified mail with return receipt requested, that it may file a written statement or comments; and

(2) Mails to each party and to the affected Indian tribe or tribes, by certified mail with return receipt requested, written notice of the Secretary's final withholding decision.

(Authority: 20 U.S.C. 7704)

§ 222.119 What is the effect of withholding under this subpart?

(a) The withholding provisions in this subpart apply to all payments that an LEA is otherwise eligible to receive under section 8003 of the Act for any fiscal year.

(b) The Assistant Secretary withholds funds after completion of any administrative proceedings under §§ 222.116–222.118 until the LEA documents either compliance or exemption from compliance with the requirements in section 8004 of the Act and this subpart.

(Authority: 20 U.S.C. 7704 (a), (b), (d)(2), (e)(8)–(9))

§ 222.120 When is a local educational agency exempt from withholding of payments?

Except as provided in paragraph (d)(2) of this section, the Assistant Secretary does not withhold payments to an LEA under the following circumstances:

(a) The LEA documents that it has received a written statement from the affected Indian tribe or tribes that the LEA need not comply with section 8004 (a) and (b) of the Act, because the affected Indian tribe or tribes is satisfied with the provision of educational services by the LEA to the children claimed on the LEA's application for assistance under section 8003 of the Act.

(b) The Assistant Secretary receives from the affected Indian tribe or tribes a written request that meets the requirements of § 222.121 not to withhold payments from an LEA.

(c) The Assistant Secretary, on the basis of documentation provided by the LEA, determines that withholding payments during the course of the school year would substantially disrupt the educational programs of the LEA.

(d)(1) The affected Indian tribe or tribes elects to have educational services provided by the Bureau of Indian Affairs under section 1101(d) of the Education Amendments of 1978.

(2) For an LEA described in paragraph (d)(1) of this section, the Secretary recalculates the section 8003 payment that the LEA is otherwise eligible to receive to reflect the number of students who remain in attendance at the LEA.

(Authority: 20 U.S.C. 7703(a), 7704(c), (d)(2) and (e)(8))

§ 222.121 How does the affected Indian tribe or tribes request that payments to a local educational agency not be withheld?

(a) The affected Indian tribe or tribes may submit to the Assistant Secretary a formal request not to withhold payments from an LEA.

(b) The formal request must be in writing and signed by the tribal chairman or authorized designee.

(Authority: 20 U.S.C. 7704 (d)(2) and (e)(8))

§ 222.122 What procedures are followed if it is determined that the local educational agency's funds will not be withheld under this subpart?

If the Secretary determines that an LEA's payments will not be withheld under this subpart, the Assistant Secretary notifies the LEA and the affected Indian tribe or tribes, in writing, by certified mail with return receipt requested, of the reasons why the payments will not be withheld.

(Authority: 20 U.S.C. 7704 (d)–(e))

§ 222.150 [Amended]

13. In § 222.150, paragraph (b)(1) is amended by removing ''§§ 222.90–222.114'', and adding in its place ''§§ 222.90–222.122''.

14. Section 222.151 is amended by revising the title and paragraph (b)(1) to read as follows:

§ 222.151 When is an administrative hearing provided to a local educational agency?

* * * * *

(b) * * *

(1) The applicant files a written request for an administrative hearing within 30 days of its receipt of written notice of the adverse action; and

* * * * *

15. Section 222.152 is amended by revising paragraphs (b) and (c) to read as follows:

§ 222.152 When may a local educational agency request reconsideration of a determination?

* * * * *

(b) The Secretary's (or the Secretary's delegatee's) consideration of a request for reconsideration is not prejudiced by a pending request for an administrative hearing on the same matter, or the fact that a matter has been scheduled for a hearing. The Secretary (or the Secretary's delegatee) may, but is not required to, postpone the administrative hearing due to a request for reconsideration.

(c) The Secretary (or the Secretary's delegatee) may reconsider any determination under the Act or Pub. L. 81–874 concerning a particular party unless the determination has been the subject of an administrative hearing under this part with respect to that party.

(Authority: 20 U.S.C. 7711(a))

16. Section 222.154 is amended by revising paragraph (e) to read as follows:

§ 222.154 How must written submissions under this subpart be filed?

* * * * *

(e) Any party filing a document by facsimile transmission must file a follow-up hard copy by hand-delivery or mail within a reasonable period of time.

(Authority: 20 U.S.C. 7711(a))

§ 222.156 [Amended]

17. In § 222.156, paragraph (g) is amended by removing ''hearing examiner'', and adding in its place ''ALJ''.

18. Section 222.157 is amended by revising the heading and paragraphs (a) and (b)(1) to read as follows:

§ 222.157 What procedures apply for issuing or appealing an administrative law judge's decision?

(a) *Decision.* (1) The ALJ—

(i) Makes written findings and an initial decision based upon the hearing record; and

(ii) Forwards to the Secretary, and mails to each party, a copy of the written findings and initial decision.

(2) An ALJ's initial decision constitutes the Secretary's final decision without any further proceedings unless—

(i) A party, within the time limits stated in paragraph (b)(1)(ii) of this section, requests the Secretary to review the decision and that request is granted; or

(ii) The Secretary otherwise determines, within the time limits stated in paragraph (b)(2)(ii) of this section, to review the initial decision.

(3) When an initial decision becomes the Secretary's final decision without any further proceedings, the Department's Office of Hearings and Appeals notifies the parties of the finality of the decision.

(b) *Administrative appeal of an initial decision.* (1)(i) Any party may request the Secretary to review an initial decision.

(ii) A party must file such a request for review within 30 days of the party's receipt of the initial decision.

* * * * *

19. In § 222.158, the heading, introductory text, and paragraph (b), are revised to read as follows:

§ 222.158 What procedures apply to the Secretary's review of an initial decision?

When the Secretary reviews an initial decision, the Secretary—

(a) * * *

(b) Mails to each party written notice of the Secretary's final decision.

(Authority: 20 U.S.C. 7711(a))

20. In § 222.161, paragraph (c) is amended by removing the paragraph designations before each definition, reordering the definitions in alphabetical order, and adding in alphabetical order the following new definitions of ''Local tax revenues,'' ''Local tax revenues covered under a State equalization program,'' and ''Total local tax revenues'':

§ 222.161 How is State aid treated under section 8009 of the Act?

* * * * *

(c) *Definitions.* The following definitions apply to this subpart:

* * * * *

Local tax revenues means compulsory charges levied by an LEA or by an intermediate school district or other local governmental entity on behalf of an LEA for current expenditures for educational services. ''Local tax revenues'' include the proceeds of ad valorem taxes, sales and use taxes, income taxes and other taxes. Where a State funding formula requires a local contribution equivalent to a specified mill tax levy on taxable real or personal property or both, ''local tax revenues'' include any revenues recognized by the State as satisfying that local contribution requirement.

Local tax revenues covered under a State equalization program means ''local tax revenues'' as defined in paragraph (c) of this section contributed to or taken into consideration in a State aid program subject to a determination under this subpart, but excluding all revenues from State and Federal sources.

* * * * *

Total local tax revenues means all ''local tax revenues'' as defined in paragraph (c) of this section, including tax revenues for education programs for children needing special services, vocational education, transportation, and the like during the period in question but excluding all revenues from State and Federal sources.

* * * * *

21. In § 222.162, paragraph (a) is revised to read as follows:

§ 222.162 What disparity standard must a State meet in order to be certified and how are disparities in current expenditures or revenues per pupil measured?

(a) *Percentage disparity limitation.* The Secretary considers that a State aid program equalizes expenditures if the disparity in the amount of current expenditures or revenues per pupil for free public education among LEAs in the State is no more than 25 percent. In determining the disparity percentage, the Secretary disregards LEAs with per pupil expenditures or revenues above the 95th or below the 5th percentile of those expenditures or revenues in the State. The method for calculating the percentage of disparity in a State is in the appendix to this subpart.

* * * * *

21. In § 222.164, paragraphs (a)(2) and (b) are revised, and an OMB control number is added before the authority citation, to read as follows:

§ 222.164 What procedures does the Secretary follow in making a determination under section 8009?

(a) * * *

(2) Whenever a proceeding under this subpart is initiated, the party initiating the proceeding shall give adequate notice to the State and all LEAs in the State and provide them with a complete copy of the submission initiating the proceeding. In addition, the party initiating the proceeding shall notify the State and all LEAs in the State of their right to request from the Secretary, within 30 days of the initiation of a proceeding, the opportunity to present their views to the Secretary before the Secretary makes a determination.

(b) *Submission.* (1) A submission by a State or LEA under this section must be made in the manner requested by the Secretary and must contain the information and assurances as may be required by the Secretary in order to reach a determination under section 8009 and this subpart.

(2)(i) A State in a submission shall—

(A) Demonstrate how its State aid program comports with § 222.162; and

(B) Demonstrate for each LEA receiving funds under the Act that the proportion of those funds that will be taken into consideration comports with § 222.163.

(ii) The submission must be received by the Secretary no later than 120 calendar days before the beginning of the State's fiscal year for the year of the determination, and must include (except as provided in § 222.161(c)(2)) final second preceding fiscal year disparity data enabling the Secretary to determine whether the standard in § 222.162 has been met. The submission is considered timely if received by the Secretary on or before the filing deadline or if it bears a U.S. Postal Service postmark dated on or before the filing deadline.

(3) An LEA in a submission must demonstrate whether the State aid program comports with section 8009.

(4) Whenever a proceeding is initiated under this subpart, the Secretary may request from a State the data deemed necessary to make a determination. A failure on the part of a State to comply with that request within a reasonable period of time results in a summary determination by the Secretary that the State aid program of that State does not comport with the regulations in this subpart.

(5) Before making a determination under section 8009, the Secretary affords the State, and all LEAs in the State, an opportunity to present their views as follows:

(i) Upon receipt of a timely request for a predetermination hearing, the Secretary notifies all LEAs and the State of the time and place of the predetermination hearing.

(ii) Predetermination hearings are informal and any LEA and the State may participate whether or not they requested the predetermination hearing.

(iii) At the conclusion of the predetermination hearing, the Secretary holds the record open for 15 days for the submission of post-hearing comments. The Secretary may extend the period for post-hearing comments for good cause for up to an additional 15 days.

(iv) Instead of a predetermination hearing, if the party or parties requesting the predetermination hearing agree, they may present their views to the Secretary exclusively in writing. In such a case, the Secretary notifies all LEAs and the State that this alternative procedure is being followed and that they have up to 30 days from the date of the notice in which to submit their views in writing. Any LEA or the State may submit its views in writing within the specified time, regardless of whether it requested the opportunity to present its views.

* * * * *

(Approved by the Office of Management and Budget under control number 1810–0036)

(Authority: 20 U.S.C. 7709)

22. In § 222.165, paragraphs (e), (f), and (h) are revised to read as follows:

§ 222.165 What procedures does the Secretary follow after making a determination under section 8009?

* * * * *

(e) *Proceedings.* (1) The Secretary refers the matter in controversy to an administrative law judge (ALJ) appointed under 5 U.S.C. 3105.

(2) The ALJ is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(f) *Filing requirements.* (1) Any written submission under this section must be filed by hand-delivery, mail, or facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(2) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(3) The filing date for a written submission under this section is the date the document is—

(i) Hand-delivered;

(ii) Mailed; or

(iii) Sent by facsimile transmission.

(4) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(5) Any party filing a document by facsimile transmission must file a follow-up hard copy by hand-delivery or mail within a reasonable period of time.

(g) * * *

(h) *Decisions.* (1) The ALJ—

(i) Makes written findings and an initial decision based upon the hearing record; and

(ii) Forwards to the Secretary, and mails to each party, a copy of the written findings and initial decision.

(2) Appeals to the Secretary and the finality of initial decisions under section 8009 are governed by §§ 222.157(b), 222.158, and 222.159 of subpart J of this part.

(Authority: 20 U.S.C. 7709)

[FR Doc. 97–17208 Filed 6–30–97; 8:45 am]

BILLING CODE 4000–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 203

Copyright Rules and Regulations: Copyright, Freedom of Information Act

AGENCY: Copyright Office, Library of Congress.

ACTION: Technical amendments.

SUMMARY: The Copyright Office is making non-substantive housekeeping amendments to its regulations to update them and to correct minor errors.

EFFECTIVE DATE: June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, or Patricia L. Sinn, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office periodically reviews its regulations as published in the Code of Federal Regulations (CFR) to correct minor errors perceived in the published text. The Office has identified minor errors in the currently published rules. The following sections are amended to correct changed address references: §§ 201.1(a), 201.1(b), 201.1(c), 201.1(d), 201.2(b)(5), 201.5(c)(2), and 202.3(b)(2). Typographical errors are corrected in §§ 202.20(c)(2)(vii)(A)(2) and 202.20(c)(2)(vii)(D)(1). An update in citation to the copyright statute and authority for issuing regulations to implement the Freedom of Information Act is made to § 203.2(a).

List of Subjects

37 CFR Part 201

Copyright, General Provisions.

37 CFR Part 202

Copyright, Registration.

37 CFR Part 203

Freedom of Information Act.

Final Rule

Accordingly, 37 CFR Chapter II is corrected by making the following corrections and amendments.

PART 201—GENERAL PROVISIONS

1. The authority citation for Part 201 continues to read as follows:

Authority: 17 U.S.C. 702, 17 U.S.C. 1003.

§ 201.1 [Amended]

2. Section 201.1(a) is amended by removing ''Washington, DC 20559.'' and adding ''Copyright Office, 101 Independence Avenue, S.E., Washington, DC 20559–6000.'' after ''Library of Congress.''

3. Section 201.1(b) is amended by removing ''Copyright Office, Library of Congress, Washington, DC 20557.'' and adding in its place ''Library of Congress, Copyright Office, 101 Independence Avenue, S.E., Washington, DC 20559–6000.''