DEPARTMENT OF EDUCATION

34 CFR Parts 218, 219, 221, 222, and 223

RIN 1810-AA80

Impact Aid Program

AGENCY: Department of Education **ACTION:** Final regulations.

SUMMARY: The Secretary issues these final regulations governing the Impact Aid Program under title VIII of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994. The program, in general, provides assistance for maintenance and operations costs to local educational agencies (LEAs) that are affected by Federal activities. These final regulations implement changes from the previous Impact Aid laws, Public Law 81–874 and Public Law 81–815, which were repealed when title VIII of the Elementary and Secondary Education Act was enacted, and replace the regulations currently found at 34 CFR parts 218, 219, 221, 222, and 223. **EFFECTIVE DATE:** These regulations take effect October 30, 1995.

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Telephone: (202) 260–3907. 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: The 1994 reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) revised many Federal elementary and secondary education programs, including the Impact Aid Program. Under that 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. The final regulations in this document implement many of the changes made by these amendments and are being published to clarify the operation of title VIII of the ESEA (referred to in these regulations as "the Act") for grantees. These final regulations also implement a change made by an amendment to the General

Education Provisions Act (GEPA). In addition, on March 4, 1995, President Clinton announced the Regulatory Reinvention Initiative, which directed heads of Federal departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. The Department has undertaken a thorough review of the existing Impact Aid Program regulations in light of this initiative

As a part of that process, the Secretary in this final regulation has removed regulations that are obsolete due to changes made in the statute by the Improving America's Schools Act of 1994 (IASA), or that are unnecessary due to the fact that they simply repeated statutory provisions. In addition, the Secretary has reorganized, streamlined, and revised the remaining regulations so that they are more logically organized, clearly stated, and easier to use. In that process, five parts have been reduced to one; and the codified pages of Impact Aid regulations have been reduced by more than 50 percent. These reductions are due primarily to changes made by the IASA, which removed several portions of the Impact Aid Program (e.g., the disaster assistance program, previously codified in part 219, and much of the school construction program, previously codified in part 221), and to the consolidation and streamlining of remaining provisions.

Except where changes were necessary to conform the previous regulations to the new Impact Aid law (title VIII of the ESEA), and for a few minor procedural changes, these final regulations contain the same substantive provisions as in the previous regulations. The Secretary intends to publish a notice of proposed rulemaking (NPRM) in the near future to implement a few provisions in the new law that are not included in these final regulations, and to make any substantive changes that have been identified as needed under the Secretary's reinvention review.

General (Subpart A)

Subpart A has been reorganized to include all of the Impact Aid regulations with general applicability. These regulations previously were in subparts A, B, C, E, and I of part 222.

§ 222.2 What definitions apply to this part?

The following program-specific definitions have been removed as unnecessary: Arrangements, County, Current expenditures, Current fiscal year of the local educational agency, Entitlement, Parent-pupil survey (incorporated into § 222.35), Prorated entitlement, and School year. The remaining definitions in this section are generally applicable to all of part 222. In § 222.2(a)(1), the Secretary lists

eight terms defined in section 8013 of the ESEA that are used as defined in that section. The Secretary has clarified the meanings of the remaining five terms in section 8013 as follows: "Federal property," "Local educational agency," and "Revenues derived from local sources" are found in § 222.2(c); and "Free public education" is found in § 222.30 (as indicated in § 222.2(a)(2)).

§ 222.10 How long must a local educational agency retain records?

The Department-wide record retention requirement in section 443(a) (previously section 437(a)) of the GEPA was amended by the IASA to reduce the period during which recipients must retain records from five to three years. This change is implemented for the Impact Aid Program in § 222.10, which provides that an LEA now must keep its records until the later of three years after the last payment it receives for a fiscal year, or resolution of any pending audit or review and any resulting payment adjustments.

Payments for Federal Property Under Section 8002 of the Act (Subpart B)

The regulations in subpart B implement section 8002 of the ESEA, previously section 2 of Pub. L. 81–874. These regulations, which have been substantially streamlined by removing payment and obsolete provisions, previously were in subpart J of part 222.

§ 222.21 What requirements must a local educational agency meet concerning Federal acquisition of real property within the local educational agency?

The general ten percent eligibility standard in section 8002 of the ESEA (generally requiring federally owned property acquired since 1938 to comprise at least ten percent of the LEA's aggregate assessed value as of the time of acquisition) was expanded by the ESEA under limited circumstances. Section 222.21(a)(1)(ii) implements the expanded standard in section 8002(a)(1)(C)(ii) of the ESEA concerning the assessed value that is used for the purpose of determining eligibility under section 8002(a)(1). That new standard provides that, under certain specific circumstances, the assessed value used for that eligibility test may be the assessed value in the first year preceding or succeeding Federal acquisition, whichever is greater, rather than the assessed value for the year of Federal acquisition as generally required.

Section 222.21(a)(2) incorporates the expanded eligibility standard in section 8002(e), allowing certain additional districts containing Forest Service property to qualify under the ten percent standard if they have between 20,000 and 60,000 acres of Forest Service land (rather than 50,000–55,000 acres as previously was required), and their counties were chartered either in