1875 or 1890 (rather than in 1875 only as previously required).

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

Section 8002(a)(2) of the ESEA retained a second eligibility standard, which provides that an LEA may not receive a payment under section 8002 if it is otherwise substantially compensated through Federal activities related to the Federal property. This standard is implemented in § 222.22(a), which clarifies that the Secretary will base the application of this standard upon the revenues that an LEA receives from the Federal activities during the previous fiscal year, rather than during the current year as previously occurred. This change is consistent with the new payment provision in section 8002(b)(1) of the ESEA, under which these revenues for the previous year must be deducted from the amount that an LEA otherwise would be paid under section

In addition, § 222.22(b) clarifies that the lack of substantial compensation standard will be met only if the revenues received the preceding year do not equal or exceed the maximum payment amount under section 8002(b) of the ESEA. This is changed from the current regulations, under which the revenues may not equal or exceed the "need-based" entitlement amount. This change is necessary because the need-based entitlement has been removed from the statute as a basis for payment.

Payments for Federally Connected Children Under Section 8003(b) and (e) of the Act (Subpart C)

The regulations in subpart C implement the basic payment provisions for federally connected children under section 8003 of the ESEA, including the provisions in section 8003(b) for basic support payments. Under these provisions, payments are based upon certain categories of federally connected children. Similar regulatory provisions implementing section 3 of Pub. L. 81–874 previously were in subparts A, C, and D of part 222.

§ 222.34 If an applicant makes a second membership count, when must that count be made?

Basic support payments under section 8003 of the ESEA are based upon the number of federally connected children in average daily attendance (ADA) at an LEA, for whom the LEA provided a free public education during the preceding school year. LEAs determine their number of federally connected children through one or more membership counts during the school year. If an LEA

makes a second membership count, it previously has been required to do so during the "last quarter of the school year." Because year-round schools often are not based upon "quarters," § 222.34 has been revised to clarify that if an LEA makes a second membership count, it must do so after January 31 but before May 15. This time period for the optional second membership count is to avoid the double counting of certain military children that could now otherwise occur due to the new statutory provision in section 8006 of the ESEA (payments for sudden and substantial increases of eligible children beginning with May 15).

§ 222.35 How does a local educational agency count the membership of its federally connected children?

Membership counts are made by LEAs either through a parent-pupil survey or a source check, or both. Section 222.35 explains what information must be obtained in a parent-pupil survey and a source check. The Secretary removes the previous requirement that an LEA obtain the name of each child's teacher on the parent-pupil survey form because it is unnecessary.

§ 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)?

Sections 8003(a)(3) and (b)(1)(B) of the ESEA establish minimum thresholds for the number of federally connected children that an LEA must have to receive a payment under section 8003 (except for a hold harmless payment under section 8003(e) for fiscal year 1995). Section 222.36, which implements these provisions, clarifies that if an LEA does not have the minimum number of federally connected children described in section 8003(a)(1)(F) or (G) (federally connected children who either reside on or whose parents are employed on Federal property, but not both) necessary to meet the special rule described in section 8003(a)(3), those children are not counted for the purpose of section 8003 payments, or in determining whether the LEA meets the minimum threshold under section 8003(b)(1)(B).

§ 222.38 What is the maximum basic support payment that a local educational agency may receive under section 8003(b)?

Section 222.38 describes the maximum basic support payment that an LEA may receive under section 8003(b)(1)(C) of the ESEA.

§ 222.39 How does a State educational agency identify generally comparable local educational agencies for local contribution rate purposes?

§ 222.40 How does a local educational agency select a local contribution rate based on generally comparable local educational agencies?

§ 222.41 How does a State educational agency compute local contribution rates based upon generally comparable local educational agencies?

Section 8003(b)(1)(C)(iii) of the ESEA establishes that one of the factors upon which an LEA's maximum basic support amount may be based is a local contribution rate (LCR) based on generally comparable LEAs as determined under the regulations implementing Public Law 81-874 that were in effect on January 1, 1994. Although the Secretary has revised §§ 222.39–222.41 slightly for clarity and to make necessary technical changes consistent with the reauthorized statute, those regulations retain the regulatory method for determining LCRs that was in effect on January 1, 1994.

Under those regulations, the term "heavily impacted LEA" is changed to "significantly impacted LEA" to avoid confusion with the section 8003(f) "heavily impacted" LEAs, which include LEAs with different characteristics. Under these amended regulations, "significantly impacted" is limited to two types of LEAs: (1) any LEA having 20 percent or more of its ADA composed of children described under section 3(a) of Public Law 81–874 (now described under section 8003(a)(1)(A)-(C) of the ESEA); and (2) any LEA having 50 percent or more of its ADA composed of children described under both sections 3(a) and (b) of Public Law 81-874 (now described under section 8003(a)(1)(A)-(G) of the

The Secretary revises the previous regulations to provide that LCRs are computed based upon data from the third fiscal year preceding the fiscal year for which the LCR is computed, rather than from the second preceding fiscal year as in the previous regulations. This change is based upon section 8003(c) of the ESEA, which specifies that basic support payments are based upon one year older data than were used when the previous LCR regulations initially were adopted.

Payments Under Section 8003(d) of the Act for Local Educational Agencies That Serve Children with Disabilities (Subpart D)

The regulations in subpart D implement the provisions in section 8003(d) of the ESEA governing payments to LEAs that serve certain federally connected children with