section 8003 from LEAs that fail to comply with section 8004(a).

Facilities Assistance and Transfers under Section 8008 of the Act (Subpart I)

The regulations in subpart I implement the provisions in section 8008 of the ESEA concerning facilities maintenance. Pub. L. 81–815, the former Impact Aid School Construction statute, was repealed as part of the IASA. Under section 10 of Pub. L. 81–815, the Secretary had the authority to make arrangements for "constructing, leasing, renovating, remodeling, or rehabilitating or otherwise providing" the minimum school facilities necessary for the education of certain federally connected students for whom such facilities were unavailable.

Section 8008 specifies that the Secretary may continue to provide assistance for the school facilities that were supported under section 10 of Public Law 81–815. However, this authority indicates that the Secretary is, as soon as practicable, to transfer to an appropriate LEA or entity the United States' interest in those facilities. Due to these statutory changes, the relevant regulations, § 221.5 and subpart H, which were previously contained in 34 CFR part 221, have been clarified and streamlined, consistent with the more limited authorities in section 8008.

Impact Aid Administrative Hearings and Judicial Review under Section 8011 of the Act (Subpart J)

The regulations in subpart J implement the provisions in section 8011(a) of the ESEA for administrative review following an adverse action. Regulations implementing a similar administrative review provision in section 5(g) of Pub. L. 81–874 previously were in part 218. This subpart governs all Impact Aid administrative hearings, except Indian policies and procedures hearings (in subpart G) and hearings concerning determinations under section 8009 of the ESEA (in subpart K).

In addition, the regulations in this subpart implement section 8011(b) of the ESEA, which changes the forum in which a party must seek judicial review. Under that provision, if a party seeks review of the Secretary's final decision following an administrative hearing proceeding under section 8011(a), that review must be sought in the United States Court of Appeals in the circuit in which the LEA or State is located, rather than in a lower court such as a United States District Court or the Court of Federal Claims as previously occurred. Determinations under Section 8009 of the Act (Subpart K)

The regulations in subpart K implement the provisions in section 8009 of the ESEA. Under this section, States are prohibited from considering Impact Aid in the allocation of State aid, except in those cases where the Secretary determines and certifies that the State has in effect a program of State aid that equalizes expenditures for free public education among the State's LEAs. Sections 222.161-222.165 describe the substantive and procedural requirements for States to obtain certification and consider Impact Aid in accordance with section 8009 of the ESEA. Regulations implementing similar provisions in section 5(d) (1) and (2) of Pub. L. 81-874 previously were in subpart G of part 222.

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

Section 8009 of the ESEA contains several changes from the previous law that are implemented by § 222.161. Section 222.161(a)(1)(iv)(4) implements the new requirements in section 8009(b)(1) of the ESEA, under which all States are prohibited from considering Impact Aid before certification by the Secretary. Section 222.161(b) implements the new requirement in section 8009(b)(2)(A) that determinations by the Secretary are to be based on final data for the second fiscal year preceding the fiscal year for which the determination is made if substantially the same program of State aid was then in effect.

This regulation also clarifies that, in those cases in which the Secretary determines that the State has substantially revised its State aid program, the Secretary may certify that program for any fiscal year only if the Secretary determines, on the basis of projected data, that the State's program will meet the disparity standard described in § 222.162. The State must also provide an assurance to the Secretary that, if final data do not demonstrate that the State's program met that standard for the fiscal year for which the determination is made, the State will pay to each affected LEA the amount by which the State reduced State aid to the LEA. The regulation requires that data projections submitted by a State must set forth the assumptions upon which the data projections are founded, be accompanied by an assurance as to their accuracy, and be adjusted by actual data for the fiscal year of determination that must be submitted to the Secretary as soon as those data are available.

§ 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?

Section 8009(b)(2) of the ESEA establishes a new, single, statutory standard for eligibility for the consideration of Impact Aid in a State's allocation of State aid. That standard is based upon the allowable disparities in per-pupil revenues or expenditures, under which the range of permissible disparity is 25 percent for fiscal years 1995–97 and 20 percent for fiscal years 1998 and 1999. Section 222.162 reflects these requirements and specifies the method the Secretary will employ to measure the statutory disparity standard. Detailed examples of the application of this method to State funding programs are provided in the Appendix following subpart K.

§222.163 What proportion of funds distributed under the Act may a State take into consideration upon certification?

Once a State is certified by the Secretary, section 8009(d) of the ESEA provides that the State may reduce State aid in a limited amount equal to a specified proportion of certain Impact Aid receipts. Specifically, the proportion established by section 8009(d) is the proportion that the local tax revenues covered under the equalization program are of the total local tax revenues attributable to current expenditures for free public education within that agency. Section 222.163 clarifies how the Secretary applies this statutory limitation.

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

Section 222.164 specifies the procedures to be followed by the Secretary in making determinations under section 8009. Those procedures include the requirement that a submission by a State seeking certification as equalized 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. The submission must include final second preceding fiscal year disparity data (except as provided in \S 222.161(b)(2)) enabling the Secretary to determine whether the State qualifies.

This regulation also provides that, before making a determination under section 8009, the Secretary will afford the State, and all LEAs in the State, an opportunity to present their views to the Department.