DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810–AB00

[Docket ID: ED–2008–OESE–0008]

Impact Aid Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends regulations governing the Impact Aid program under Title VIII of the Elementary and Secondary Education Act of 1965 (Act), as amended by the No Child Left Behind Act of 2001. The program, in general, provides assistance for maintenance and operations costs to local educational agencies (LEAs) that are affected by Federal activities. These amended regulations are necessary to clarify and improve the administration of payments under section 8002 of the Act relating to the Federal acquisition of real property.

DATES: These regulations are effective December 22, 2008. However, affected parties do not have to comply with the information collection requirements in § 222.23 until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Catherine Schagh, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E105, Washington, DC 20202–6244. Telephone: (202) 260–3858 or via the Internet, at: *Impact.Aid@ed.gov.*

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SUPPLEMENTARY INFORMATION: On June 2, 2008, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (73 FR 31592) to amend the regulations implementing the Payments for Federal Property portion of the Impact Aid program. The Payments for Federal Property portion of the Impact Aid program is authorized under section 8002 of the Elementary and Secondary Education Act of 1965 (Act), as amended by the No Child Left Behind Act of 2001. Current regulations implementing the program authorized under section 8002 are found in 34 CFR 222.20 through 222.23. In the preamble to the NPRM, the Secretary discussed on pages 31593–31595 the major changes proposed for § 222.21, concerning how an LEA establishes eligibility for section 8002 payments, and the major changes proposed for § 222.23, concerning how a local official determines an aggregate estimated assessed value (EAV) for the eligible Federal property upon which section 8002 payments are based.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, thirty-six parties submitted comments on the proposed regulations. In general, except as described below, the comments supported the proposed regulations or did not oppose them. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. We group major issues according to subject. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes or suggested changes the Secretary is not authorized to make under applicable law.

Requirements That a Local Educational Agency Must Meet Concerning Federal Acquisition of Real Property Within the Local Educational Agency (§ 222.21)

Comment: Nearly every commenter expressed support for the proposal to expand the scope of records upon which the Secretary bases determinations and redeterminations of eligibility under section 8002(a)(1) of the Act. We received no comments that opposed it.

Discussion: The Secretary appreciates the commenters' support. The regulations will provide greater flexibility to applicants in documenting their eligibility for assistance under section 8002 of the Act.

Changes: None.

Non-Availability of Adjacent Taxable Land (§ 222.23)

Comment: One commenter expressed concerns about proposed § 222.23 insofar as this section provides that the EAV of eligible Federal property is based on adjacent taxable property. The commenter asserted that there are not suitable adjacent taxable properties in the commenter's LEA, due to the prevalence of tax-exempt property. As a result, the commenter further asserted that, with regard to the LEA in question, the proposed general method for determining EAV provided for in § 222.23 is not feasible.

Discussion: The proposed regulations anticipated cases in which taxable property close to eligible Federal property or within a particular LEA might not be available. Accordingly, proposed § 222.23(e)(1)(iii), which defines *adjacent* properties, allowed the use of taxable properties outside the boundaries of the LEA or beyond the distance from the eligible Federal property specified in the definition in extremely rare circumstances determined by the Secretary. The circumstances described by the commenter, when there are no suitable adjacent taxable properties within the LEA that could be used to determine the EAV of eligible Federal property, if verified, would warrant a determination by the Secretary that ''extremely rare circumstances'' exist so that the exception in § 222.23(e)(1)(iii) would apply and more distant properties could be used.

The Secretary is aware of other similar circumstances in which all of the waterfront or oceanfront property within an LEA is located on the eligible Federal property and there is no comparable taxable waterfront or oceanfront property in the LEA. If the Secretary determines that such a situation exists, the Secretary would invoke § 222.23(e)(1)(iii), upon request by the LEA, to permit the use of appropriate waterfront or oceanfront properties located in another LEA. The Secretary is amending the definition of *adjacent* to provide examples of situations that would be considered extremely rare circumstances and might warrant the use of more distant adjacent taxable properties.

Changes: We have revised § 222.23(e)(1)(iii) to provide examples of some extremely rare circumstances that might warrant the use of adjacent taxable properties more than two miles from the eligible Federal property or outside of the LEA.

Imputing a Non-Assessed or Tax-Exempt Portion of Eligible Federal Property (§ 222.23(C)(1)(I))

Comment: Many comments expressed strong support for the general requirement in the proposed regulations that local officials allocate a proportion of the eligible Federal property acres in each usage category for expected non-assessed or tax-exempt uses. None opposed it.

In the NPRM, the Secretary stated that she was particularly interested in comments related to whether it would be appropriate to establish a standard

proportion for each use category of eligible Federal property that would be allocated to anticipated non-assessed or tax-exempt uses and, if so, what a reasonable standard proportion would be. In response to the Secretary's query, most commenters opposed the idea of establishing a standard proportion, urging instead that the local official should rely on his or her expert knowledge of the area and of the eligible Federal property in making the allocation. One commenter requested that the Department provide guidelines about how to determine the proportion of eligible Federal property that likely would be exempt from local real property taxes.

Another commenter noted that the list of non-assessed or tax-exempt uses in proposed § 222.23(c)(1)(i) is not exhaustive. The same commenter noted that the failure to allocate a proportion of the eligible Federal property acres in each usage category for expected non-assessed or tax-exempt uses would result in the gross overstatement of the estimated assessed value. That commenter also believed that in arriving at a percentage to be used in allocating non-assessed and tax-exempt uses to the eligible Federal property, the local official would be looking at the prevalence of those uses within the boundaries of a one-mile perimeter of the eligible Federal property.

Discussion: Based upon the strong opposition expressed in the comments to the idea of establishing a standard proportion for non-assessed or tax-exempt uses, and in light of the widely divergent circumstances from locality to locality, the Secretary has decided to retain the approach in the proposed regulations of relying on the local official's expert knowledge of the area and of the eligible Federal property in making the allocation. Additionally, we have decided not to issue specific methodological guidelines on how local officials must make this determination. We will monitor the implementation of this new regulatory requirement to determine whether there is a need for further elaboration in order to assure consistent practice.

The Secretary acknowledges that the regulations do not contain an exhaustive list of non-assessed or tax-exempt uses. The words ''such as'' in the proposed regulation were meant to convey that the allocation should include any non-assessed or tax-exempt uses common in the area, not just those enumerated in the regulations. All of the non-assessed or tax-exempt uses common to the tax jurisdiction(s) should be considered by the local official in making the allocation.

The Secretary agrees that the failure to allocate a proportion of the eligible Federal property acres in each usage category for expected non-assessed or tax-exempt uses would result in the overstatement of the estimated assessed value. The regulations are intended to prevent such overstatement by ensuring that non-exempt or non-assessed uses are ascribed to a portion of eligible Federal property.

The Secretary disagrees with the commenter who stated that the percentage used to allocate a proportion of eligible Federal property to non-assessed or tax-exempt uses should be based on the property within a one-mile perimeter of the eligible Federal property. The Secretary believes that use of the tax jurisdiction(s) as a whole is a more suitable basis for projecting the non-assessed and tax-exempt uses likely to occur on the eligible Federal property should it revert to private ownership. We have revised § 222.23(c)(1)(i) to clarify this point.

Changes: Section 222.23(c)(1)(i) has been amended to specify that the local official bases non-assessed or tax-exempt proportions for the Federal property on the actual non-assessed or tax-exempt uses for each category in the entire tax jurisdiction(s) where the selected taxable adjacent properties are located.

Minimum Number of Adjacent Taxable Properties (§ 222.23(c)(2)(i))

Comment: Many comments supported the requirement in the proposed regulations for local officials to use a minimum sample of ten adjacent taxable properties for each use category. However, many commenters objected to the proposal requiring a local official to replicate the property with the lowest per-acre value of the selected adjacent taxable properties as many times as necessary to reach ten values when at least three but fewer than ten taxable properties are selected.

The commenters argued that the average value of the selected adjacent taxable properties should be used in lieu of the lowest value, because using the lowest value would artificially deflate the estimated value of the eligible Federal property while the average value would more accurately reflect the value of the eligible Federal property. Some commenters stated that the proposed use of the lowest value would be a hardship on rural districts.

One commenter supported the use of the lowest-value taxable property as the basis for replication because, according to the commenter, this value represents a truer indication of an estimated value for the Federal property given limitations of physical adaptability, legal permissibility, and financial feasibility. Moreover, according to this commenter, the inability to obtain ten adjacent taxable properties would be indicative of other economic factors at play in the area, such that the use of the lowest value for replication is appropriate. The commenter further asserted that by basing replication on the lowest value, the proposed regulations were taking the calculations away from a true highest and best use methodology.

Discussion: In setting the lowest per-acre value as the basis for replication to reach ten properties, the Secretary's intent was to create a strong incentive for local officials to perform an exhaustive search for taxable adjacent properties before relying on the alternative replication approach. Accordingly, we do not agree with the suggestion that the average value of the selected adjacent taxable properties should be used as the basis for replication. However, as noted elsewhere in this preamble, we are revising the regulations to increase, from one mile to two miles, the area within which adjacent taxable properties may be selected. This change should significantly reduce the number of cases in which replication will be necessary.

As described elsewhere in this preamble in the discussion of the limitation on the use of recent sales (§ 222.23(d)(2)(i)), contrary to the comment that using the lowest value as the basis for replication would artificially deflate the value of the eligible Federal property,these final regulations comport with the statutory requirement that the aggregate assessed value of eligible Federal property be determined on the basis of the highest and best use of adjacent property. This requirement is implemented when the local official categorizes and allocates the expected uses of eligible Federal property through a consideration of the highest and best uses of the adjacent taxable properties.

Finally, we have revised § 222.23(c)(2)(i) to specify that in those extremely rare circumstances in which the Secretary authorizes a local official to use fewer than three adjacent taxable properties to establish the base value for eligible Federal property, the average per-acre value of the selected adjacent property or properties is to be used in lieu of replication. An example of such ''extremely rare circumstances'' has also been added to the regulations.

Changes: Section 222.23(c)(2)(i) has been revised to specify that the Secretary may permit the local official

to select fewer than three parcels in a tax classification if doing so is determined by the Secretary to be necessary and reasonable and there is an insufficient number of adjacent taxable parcels to replicate. The revised regulations further provide that in these extremely rare circumstances, the local official establishes the base value of the eligible Federal property on the average per-acre value of the selected adjacent property or properties. We have also added to the regulations an example of the use of fewer than three adjacent taxable properties in extremely rare circumstances.

Three-Year Cycle (§ 222.23(d)(1))

Comment: Nearly all of the commenters supported the establishment of a three-year cycle for the local official to determine the EAV for the Federal property. Under the proposed regulations, the local official establishes the base value for eligible Federal property by selecting adjacent taxable properties in a base year and then updating the values of those adjacent taxable properties in the two succeeding years.

One commenter suggested that the three-year cycle moves the EAV away from the common definition of highest and best use, presumably on the assumption that it slows increases in the EAV in the two non-base years in which the selected adjacent taxable properties must be used again. The same commenter questioned whether the foreclosure of a selected taxable property would be among the circumstances under which the regulations would permit the substitution of a new selected taxable property in one of the two years succeeding the base year.

Discussion: The three-year cycle does not conflict with the concept of highest and best use because this concept is implemented through the local official's identification of, and proportions for, the expected-use categories for the Federal property. The assumption that it slows growth in the EAV in the non-base years is also not accurate since, under the regulations, the values and acreages of the selected adjacent taxable properties are updated in the non-base years.

Under § 222.23(d)(1)(iii), the substitution of an adjacent taxable property in a non-base year is appropriate only in the event of a change in assessment classification, a change to tax-exempt status, or a change in the character of the property. A foreclosure does not change the essential character of a property, although it may affect its value. Absent an accompanying change in assessment classification or change to tax-exempt status, foreclosure alone would not justify a substitution of an adjacent taxable property unless it could be shown that the character of the property has changed.

Changes: None.

Limitation on the Use of Recent Sales (§ 222.23(d)(2)(i))

Comment: Nearly all of the commenters supported the provision in the proposed regulations that would limit the use of recent sales in the selection of adjacent taxable properties. One commenter, however, asserted that the proposed limitation would be contrary to the ordinary understanding of highest and best use assessed value and a step in the direction of current actual assessed values.

The same commenter questioned the basis for the numerator and denominator in the proportion governing the maximum permissible number of adjacent taxable properties that are recent sales. The commenter suggested three possible alternatives: (1) All recent sales of taxable properties for the LEA divided by all taxable properties in the LEA; (2) all recent sales of taxable properties within a one-mile radius of the eligible Federal property divided by all taxable property within that radius; or (3) all recent sales of taxable properties within the local tax areas of the sample group divided by all taxable property in those areas.

The commenter asserted that the first option would be very difficult because hundreds of thousands of parcels within the LEA would have to be examined. Finally, the commenter questioned whether all parcels would be of equal weight, regardless of size, in calculating the limitation on the use of recent sales.

Discussion: The limitation on the use of recent sales was proposed because, under the existing regulations, some LEAs have selected different adjacent taxable properties each year consisting exclusively of new sales. This resulted in disparities among LEAs with respect to the relative rates of annual section 8002 maximum payment increases. Moreover, the preamble to the NPRM noted that it is unlikely that an eligible Federal property would change hands in its entirety every year if it were on the tax rolls (*73 FR 31595*). The virtually unanimous support by the commenters for the limit on the use of recent sales confirms the seriousness of the problem.

As explained in the preamble to the NPRM (73 FR 31595), the limitation on the use of adjacent taxable properties that are recent sales does not contravene the statutory requirement in section 8002(b)(3) that the aggregate assessed value of eligible Federal property be determined on the basis of the highest and best use of adjacent property. Under the final regulations, the local official takes into consideration the highest and best uses of the adjacent taxable properties in categorizing and allocating the expected uses of eligible Federal property, a crucial step in arriving at an aggregate assessed value.

Limiting the extent to which adjacent taxable properties used in calculating base values may be recent sales later on in the process does not negate the use of the highest and best use concept in the earlier stage. The aggregate assessed value obtained at the conclusion of the process is based upon highest and best use, by virtue of the application of that concept in categorizing and allocating the expected uses of eligible Federal property.

As Examples 4 and 5 accompanying the final regulations make clear, the numerator and denominator of the proportion used to determine the number of selected adjacent taxable properties that may be recent sales are based upon sales in the relevant tax jurisdiction(s). To prevent any possible further confusion, we are clarifying § 222.23(d)(2)(i) to specify that it is in fact the tax jurisdiction that is used to identify taxable parcels in a category and recent sales in that category.

The comment regarding the necessity for examining hundreds of thousands of parcels is incorrect. Under the regulations, no examination of individual parcels is needed with respect to the limitation on recent sales; all that is necessary for each relevant category is the number of properties in that category that are recent sales and the total number of properties in that category within the taxing jurisdiction.

In the preamble to the NPRM, the Secretary requested comments on the availability of the data necessary to determine the number of selected adjacent taxable properties that may be recent sales (73 FR 31592). While no commenter specifically addressed this point, as stated, nearly all of the commenters supported the proposed limitation on the use of recent sales.

The proportion used to limit the use of adjacent taxable properties that are recent sales is unweighted. Each property counts equally regardless of size.

Changes: We have revised § 222.23(d)(2)(i) to specify that the numerator and denominator are based on the numbers of properties in the relevant tax jurisdiction(s).

Definition of ''Adjacent'' (§ 222.23(e)(1))

Comment: Many commenters objected to the proposed definition of *adjacent,* which is used to describe the taxable properties used in deriving the EAV of eligible Federal property. Most commenters objected to the requirement that, among other things, *adjacent* properties be within one mile of the perimeter of the Federal property. The commenters preferred a wider range for the selection of adjacent taxable properties.

Some commenters said that the proposed restriction creates difficulties for rural LEAs. On the other hand, one LEA representative commented that the proposed one-mile limitation is reasonable, but that using a range of more than one mile would raise concerns about the validity of the EAV of the eligible Federal property.

That commenter expressed concern that the Department did not provide any examples of what circumstances might qualify as extremely rare circumstances justifying the use of adjacent taxable properties beyond the one-mile range. The commenter queried whether prior approval would be necessary before an LEA exceeds the specified range and how information about decisions of this nature will be communicated to other applicants.

Discussion: Under proposed § 222.23(e)(1), *adjacent* was defined to mean next to or close to the eligible Federal property with the specification that in most cases it means the closest taxable parcels in the LEA and that more distant ones could be used only where the Secretary finds it to be necessary and reasonable. Moreover, taxable properties further than one mile from the perimeter of the eligible Federal property could be used only in extremely rare circumstances determined by the Secretary.

Based on the volume of comments stating that a range of one mile from the perimeter of eligible Federal property would be inadequate for the selection of taxable properties, we have decided that it is appropriate to increase the maximum distance to no farther than two miles from the perimeter. Only when the Secretary determines that ''extremely rare circumstances'' exist may more distant taxable properties be used. Given that the final regulations also require the use of the closest taxable properties in most cases, we do not agree with the single commenter that increasing the permissible range would give rise to significant concern about the EAV of eligible Federal property derived on that basis.

With respect to whether prior approval for the use of more distant taxable properties is required, § 222.23(e)(1)(iii) of the regulations provides that the exception permitting the use of more distant properties applies only if the Secretary determines that extremely rare circumstances exist. Accordingly, LEAs whose local officials cannot locate taxable properties within the two-mile range should not unilaterally use more distant taxable properties, but should instead contact the Impact Aid Program for assistance. In addition, the Impact Aid Program will provide all applicants with regular updates on the implementation of these new regulatory requirements.

Changes: We have revised the definition of *adjacent* in § 222.23(e)(1)(iii) to provide that the Secretary considers the term to mean properties more than two miles from the perimeter of eligible Federal property or outside of the LEA *only in extremely rare circumstances determined by the Secretary.* We have also added examples of extremely rare circumstances, including a description of the process for obtaining approval for an exception.

Definition of ''highest and best use'' (§ 222.23(e)(2)(i))

Comment: One commenter supported the provision that, in considering the highest and best use of adjacent taxable property, the local official may consider the most developed and profitable use for which it is adaptable if that use is legally permissible and financially feasible and for which there is a need or demand in the near future. However, the commenter contrasted this language in proposed § 222.23(e)(2)(i) with the language in proposed § 222.23(e)(2)(ii)(B), which states that the local official *must* consider the extent to which the eligible Federal property is physically adaptable to the expected uses and there is a need for those uses. The commenter suggested that there be a uniform standard with respect to these two provisions and expressed a preference that both provisions should be mandatory.

The same commenter queried whether, subject to the limitation on the use of adjacent taxable properties that are recent sales, given the emphasis in the law on highest and best use, the local official should select only the highest economically developed adjacent taxable properties, provided that they are physically adaptable, legally permissible and financially feasible.

Discussion: The highest and best use of the adjacent taxable properties is the basis for categorizing and allocating the expected uses of eligible Federal property. The definition in the regulations of the term *highest and best use* seeks to ensure the reasonableness of the expected uses of eligible Federal property in two ways. First, it places certain limitations on the local official's selection of adjacent taxable parcels. Second, it requires the local official to examine the reasonableness of the expected uses the official allocates to the eligible Federal property.

The latter requirement (§ 222.23(e)(2)(ii)(C)) is expressed as a ''must''; that is, the local official must consider the extent to which the eligible Federal property is physically adaptable to the expected uses and there is a need for those uses. The former requirement (§ 222.23(e)(2)(i)(A)), which is applicable to adjacent taxable properties, is expressed as a ''may'' because it only applies in those cases where a local official elects to consider the most developed and profitable use for which an adjacent property is physically adaptable. However, the intent of the proposal was that if the local official elects to consider the most developed and profitable use for which it is adaptable, the local official may only do so if that use is legally permissible and financially feasible and there is a need or demand for that use in the near future. We have revised the regulations in § 222.23(e)(2)(i)(A) to clarify this point.

All of the limitations contained in the definition of *highest and best use* are mandatory. Any categorization and allocation of expected uses of eligible property that are based on uses of adjacent property that are unlawful, financially infeasible, or not in demand, fail to conform to the definition of *highest and best use* and do not comply with the regulations. Any categorization and allocation of expected uses of eligible property that are based on uses of adjacent property that are speculative or remote likewise fail to conform to the definition of *highest and best use* and do not comply with the regulations. Any categorization and allocation of expected uses of eligible Federal property for which the Federal property is not physically adaptable or for which there is no demand in the near future are not in accord with the regulations.

Accordingly, with respect to the second comment, the local official must do more than assure that the uses of the adjacent taxable properties are physically adaptable, legally permissible, and financially feasible. He or she must assure that the potential uses considered are not speculative or remote. He or she must also consider, under § 222.23(e)(2)(ii)(B), whether the

eligible Federal property is physically adaptable for the expected uses and whether there is a need for those uses. Moreover, as noted in Example 8, the local official should strive to use a range of properties generally representative of what surrounds the eligible Federal property (e.g., small properties, large properties, improved properties broadly representative of the housing, industrial, or agricultural building market, and unimproved properties in those categories).

In light of those principles, it likely would not be reasonable, for example, for a local official to base the valuation of a 100,000-acre military installation on ten half-acre residential properties with $500,000 houses on them. Among other things, the immediate demand in the area for another 200,000 properties of that type would be considered speculative and remote.

Changes: Section § 222.23(e)(2)(i) has been revised to provide that, in considering the highest and best use of adjacent taxable property, the local official may consider the most developed and profitable use for which it is adaptable *only* if that use is legally permissible and financially feasible and there is a need or demand for it in the near future.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive order and review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) create novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that this regulatory action is not significant under the Executive order.

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs. We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

In general, the final regulations will provide more specificity with respect to local officials' selection of adjacent parcels upon which they base their valuation of the Federal property. These more specific rules generally will reduce burden by eliminating the need for lengthy consultations with Department staff, multiple revisions to valuation submissions, and application amendments. Although one of the regulatory changes would require local officials to select a minimum number (generally 10) of properties on which to base the valuation of the Federal property and, therefore, may require some local officials to add more properties than they currently are using, any resulting increase in the local official's time for this task is offset by the accompanying regulatory change to reduce the selection cycle from every year to once every three years.

These final regulations will provide the following benefits for section 8002 applicants: Greater uniformity in how local officials value the eligible Federal property in each of their jurisdictions; elimination of inequitable inflation in the value of the eligible Federal property; and greater reliability and consistency in the valuation process nationwide.

Paperwork Reduction Act of 1995

Section 222.23 contains information collection requirements related to the submission of an applicant's section 8002 application. The section 8002 application form and the regulations that require it (34 CFR 222.3) are approved under OMB number 1810–0036, with an expiration date of January 31, 2009. Table 1 of that approved application (Tax Assessor's Valuation of Section 8002-eligible Federal Property) requires each applicant LEA's tax assessment official (local official) to certify the accuracy and completeness of certain information about the eligible section 8002 property, including its aggregate EAV as required by section 8002(b)(3) of the ESEA, and summary information upon which that value was derived. We anticipate OMB approval of a revised collection reflecting these requirements following the publication of the final regulations.

Section 222.23 makes several changes to the information that the local official must obtain and use in determining the aggregate EAV of the Federal property. However, for the reasons explained below, the Secretary believes that these changes do not result in an increase in the paperwork collection burden.

Sections 222.23(a)(3) and (c)(1) require local officials to identify the taxable use portions of the eligible Federal property by excluding a proportion of each expected use category that the local official would allocate to accommodate anticipated non-assessed or tax-exempt uses. We proposed this change to avoid overstating the aggregate EAV of the eligible Federal property upon which section 8002 payments are based, which otherwise might occur if a portion of the property is included that likely would remain exempt from real property taxation if no longer federally owned.

In addition, Section 222.23(c)(2)(i) requires local officials to obtain a minimum sample size of 10 adjacent properties for each type of property, rather than using a lesser number of properties. We proposed this change to standardize the minimum sample size and provide greater consistency and reliability in payments. Federal property valuations must be established as consistently as possible to achieve equity in LEAs' payments, which are based in part upon those valuations and are mutually dependent upon one another due to lack of full funding for the program.

Although the change in the minimum sample size may increase the burden for some LEAs, it will reduce or have no effect on the collection burden of others that currently obtain a higher number of sample properties. In any event, the Secretary believes that both of these changes will be offset by the following simultaneous burden reductions: (1) In § 222.23(d)(1), moving from an annual to a three-year sample selection cycle; and (2) in § 222.23(d)(2), limiting the number of recent sales that a local official may select in each base selection year, which will take far less time than searching for all new, appropriate, recent sales every year.

Assessment of Educational Impact

In the NPRM, and in accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.041, Impact Aid-Maintenance and Operations)

List of Subjects in 34 CFR Part 222

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

Dated: November 13, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

■ For the reasons discussed in the preamble, the Secretary amends part 222 of title 34 of the Code of Federal Regulations as follows:

PART 222—IMPACT AID PROGRAMS

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

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

■ 2. Section 222.21 is amended by revising the introductory text in paragraph (a), and revising paragraphs (d)(1) and (e) to read as follows:

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

(a) For an LEA with an otherwise approvable application to be eligible to receive financial assistance under section 8002 of the Act, the LEA must meet the requirements in subpart A of this part and § 222.22. In addition, unless otherwise provided by statute as meeting the requirements in section 8002(a)(1)(C), the LEA must document—

* * * * *

(d) * * *

(1) For a new section 8002 applicant or newly acquired eligible Federal property, only upon—

(i) Original records as of the time(s) of Federal acquisition of real property, prepared by a legally authorized official, documenting the assessed value of that real property;

(ii) Facsimiles, such as microfilm, or other reproductions of those records; or

(iii) If the documents specified in paragraphs (d)(1)(i) and (ii) are unavailable, other records that the Secretary determines to be appropriate and reliable for establishing eligibility under section 8002(a)(1) of the Act, such as Federal agency records or local historical records.

* * * * *

(e) The Secretary does not base the determination or redetermination of an LEA's eligibility under this section upon secondary documentation that is in the nature of an opinion, such as estimates, certifications, or appraisals.

* * * * *

■ 3. Section 222.23 is revised to read as follows:

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

(a) *General.* A local educational agency (LEA) determines the aggregate assessed value of its eligible Federal property for its section 8002 payment as follows:

(1) A local official who is responsible for assessing the value of real property located in the jurisdiction of the LEA in order to levy a property tax makes the determination of the section 8002 aggregate assessed value, based on estimated assessed values (EAVs) for the eligible Federal property in the jurisdiction.

(2) The local official first categorizes the types of expected uses of the eligible Federal property in each Federal installation or area (*e.g.*, Federal forest) based on the highest and best uses of taxable properties adjacent to the eligible Federal property (adjacent properties), and allocates a portion of the acres of the eligible Federal property to each of those expected uses, in accordance with paragraph (b) of this section.

(3) For each category of expected use of the eligible Federal property identified in accordance with paragraph (a)(2) of this section for each Federal installation or area, the local official then determines a base value in accordance with paragraphs (c) and (d) of this section.

(4) The local official next determines a section 8002 EAV for each category of expected use of the eligible Federal property in each Federal installation or area. The official determines that EAV by adjusting the base value for that category established in accordance with paragraph (a)(3) of this section, by any percentage, ratio, index, or other factor that the official would use to determine the assessed value (as defined in § 222.20) of the eligible Federal property to generate local real property tax revenues for current expenditures if that eligible Federal property were taxable. (This process is illustrated in Example 8 and Table 8–2 at the end of this section.)

(5) The local official then determines a total section 8002 EAV for each Federal installation or area in the LEA by adding together the assessed values determined pursuant to paragraph (a)(4) of this section for all property use categories of eligible Federal property in that Federal installation or area.

(6) The local official determines a section 8002 aggregate assessed value for the LEA as follows:

(i) If the LEA contains a single Federal installation or area with eligible Federal property, the total section 8002 EAV determined pursuant to paragraph (a)(5) of this section constitutes the section 8002 aggregate assessed value for the LEA.

(ii) If the LEA contains more than one Federal installation or area with eligible Federal property, the local official calculates the section 8002 aggregate assessed value for all of the eligible Federal property in the LEA by adding together the section 8002 total EAVs determined pursuant to paragraph (a)(5) of this section for all Federal installations and areas containing eligible Federal property within the LEA. (This process is illustrated in

Example 8 and Table 8–2 at the end of this section.)

(b) *Categorizing expected uses.* (1) The local official categorizes the expected uses of the eligible Federal property, in accordance with paragraph (a)(2) of this section, by—

(i) Identifying the tax assessment classifications that represent the highest and best uses of the taxable adjacent property (*e.g.*, residential, commercial, agricultural); and

(ii) Determining the relative proportions of taxable adjacent properties, based on acreage, that are devoted to each of those tax assessment classifications that represent the highest and best uses of the taxable adjacent property (*e.g.*, agricultural—50 percent; residential—40 percent; commercial—10 percent).

(2) The local official then determines the allocation of each of those expected uses to the eligible Federal property acres by multiplying each of the proportions determined under paragraph (b)(1)(ii) of this section by the total acres of the eligible Federal property in that Federal installation or area.

(c) *Determining the base value for expected use categories.* The local official determines a base value for each category of expected use of the eligible Federal property in accordance with paragraph (a)(3) of this section as follows:

(1) The local official first identifies the taxable-use portion of the eligible Federal property acres in each expected use category as follows:

(i) The local official allocates a proportion (percentage) of the eligible Federal property acres identified for each expected use category under paragraph (b)(2) of this section to expected non-assessed or tax-exempt uses, such as public open space, schools, churches, and roads. The local official bases these proportions on the actual non-assessed or tax-exempt uses for each category of taxable property in the entire tax jurisdiction(s) where the selected taxable adjacent properties are located.

(ii) The local official then determines the number of acres attributable to non-assessed or tax-exempt uses for each expected use category by multiplying the non-assessed or tax-exempt proportions identified in paragraph (c)(1)(i) of this section by the number of acres in each expected-use category determined pursuant to paragraph (b)(2) of this section.

Example 1 (Allocation of Proportion of Eligible Federal Property to Non-Assessed or Tax-exempt Uses): The eligible Federal property (1,000 acres) is surrounded by properties that are classified for tax purposes according to their highest and best uses as residential (40 percent) and agricultural (60 percent) property. For the residential category (400 acres), the local official determines that approximately 20 percent would be devoted to non-assessed or tax-exempt uses, such as roads, parks, churches, and schools. The local official multiplies that proportion (.20) by the number of eligible Federal acres allocated to the residential category (400 acres) to determine the number of eligible Federal acres (80 acres) that likely would not be assessed for taxation or would be tax-exempt if the Federal Government no longer owned that property, as illustrated in the chart at the end of this example (Table 1–1). The local official follows a similar process for the proportion of the eligible Federal property the official allocated to agricultural use.

TABLE 1–1—PROPORTION OF RESIDENTIAL CATEGORY OF SECTION 8002 ELIGIBLE FEDERAL PROPERTY ALLOCATED TO NON-ASSESSED OR TAX-EXEMPT USES

(1)	Allocated proportion (percent) (2)	Eligible Federal acres allocated to expected use category (Col. 2 × acres in expected use category) (3)
Residential portion of eligible Federal property (400 acres)		
Allocated by local official for non-assessed or tax-exempt uses	20	80
Allocated for taxable residential use	80	320
Total	100	400

(iii) The local official then calculates the number of acres attributable to taxable use for each expected use category by subtracting the number of acres attributable to non-assessed or tax-exempt uses determined under paragraph (c)(1)(ii) of this section from the total number of acres of eligible Federal property in that use category identified in paragraph (b)(2) of this section.

(2) For the taxable use portion determined under paragraph (c)(1)(iii) of this section for each expected use category, the local official then calculates a base value as follows:

(i) The local official selects from each expected use category identified pursuant to paragraph (b)(1)(i) of this section a minimum sample size of 10 taxable adjacent properties that represent the highest and best uses of the taxable adjacent properties. The official identifies the value that is recorded on the assessment records for each selected taxable adjacent property before any adjustment, ratio, percentage, or other factor is applied to establish a taxable (assessed) value. If at least three but fewer than 10 taxable adjacent properties are selected in an identified use category, the local official calculates a per acre value for each adjacent property and then identifies which of those properties has the lowest per-acre value. The official replicates that adjacent property's value and acreage as many times as needed until the combination of actual and replicated adjacent properties reaches ten in number. In extremely rare circumstances, the Secretary may permit the local official to select fewer than three parcels in a tax classification if doing so is determined by the Secretary to be necessary and reasonable and there is an insufficient number of adjacent taxable properties to replicate. In those extremely rare circumstances, the local official establishes the base value of the eligible Federal property using the average per acre value of the selected adjacent property or properties.

Example 2a (Minimum Sample Size of Adjacent Properties): The eligible Federal property is surrounded by properties that are classified for tax purposes as residential, commercial, and agricultural property. The local official selects at least 10 taxable adjacent parcels from each of the residential and agricultural property classifications as the basis for valuing the eligible Federal property.

In the commercial classification, however, only six taxable adjacent properties are selected. The lowest per-acre-valued parcel, Parcel A, is valued at $6,000 per acre. As illustrated in Table 2–1, the local official selects all six of the commercial taxable adjacent properties, and then replicates Parcel A's value and acreage four more times to reach the minimum number of ten properties for that classification.

Example 2b (Use of Fewer Than Three Adjacent Taxable Properties in Extremely Rare Circumstances): There are three golf courses in an LEA, one on eligible Federal property and the other two on taxable property adjacent to the eligible Federal property. Under the local tax classification scheme, there is a separate tax category for golf courses. Since there are only two adjacent taxable properties in that tax classification in the taxing jurisdiction, the LEA seeks permission to establish the base value for the golf course on the eligible Federal property using the average per-acre value of the two adjacent taxable golf courses. After verifying the facts, the Secretary determines that extremely rare circumstances exist within the meaning of § 222.23(c)(2)(i) and grants the LEA's request.

(ii) The local official then calculates an average per-acre value for the taxable portion of each expected use category by totaling the values (following application of any adjustment factors, if relevant) and acres of the actual and any replicated adjacent properties and then dividing the total value by the total number of acres in those properties, as illustrated in the following chart (Table 2–1).

TABLE 2–1—AVERAGE PER-ACRE VALUE OF MINIMUM SAMPLE SIZE OF ADJACENT PROPERTIES

	Selected adjacent properties—commercial classification	Value	Acres	Value per acre
	(1)	(2)	(3)	(4)
1	Parcel A	$150,000	25	$6,000
2	Parcel B	1,200,000	30	40,000
3	Parcel C	750,000	.25	3,000,000
4	Parcel D	1,000,000	40	25,000
5	Parcel E	500,000	5	100,000
6	Parcel F	250,000	.5	500,000
7	Replicated Parcel A	150,000	25	6,000
8	Replicated Parcel A	150,000	25	6,000
9	Replicated Parcel A	150,000	25	6,000
10	Replicated Parcel A	150,000	25	6,000
	Total	4,450,000	200.75	NA
	Average value/acre (TOTAL Col. 2/TOTAL Col. 3)			22,166.87

(iii) The local official then multiplies the average per-acre value calculated under paragraph (c)(2)(ii) of this section by the number of acres of eligible Federal property in the taxable portion of that expected-use category, determined in accordance with paragraph (b)(2) of this section to calculate the base value for that category.

(d) *Additional procedures for determining base values.* The local official applies the following additional procedures in determining a base value for each category of expected use of the eligible Federal property, in accordance with paragraph (a)(3) of this section:

(1) The local official determines base values on a three-year cycle, as follows:

(i) The local official allocates expected uses to the eligible Federal property in accordance with paragraph (b)(2) of this section and selects taxable adjacent properties in accordance with paragraph (c)(2)(i) of this section once every three years (base year).

(ii) For each of the following two application years, the local official uses the same allocation of expected uses of the eligible Federal property and the same taxable adjacent parcels selected for the base year, but updates the values and acreages of the selected taxable adjacent parcels.

(iii) If a previously selected taxable adjacent property becomes unsuitable for determining the base value for the expected-use category because that property has changed assessment classification, become tax-exempt, or undergone a change in character from the time that the property was selected for the base year, the local official substitutes a similar taxable adjacent property from the same expected-use category (assessment classification) in accordance with the requirements in paragraph (c)(2)(i) of this section.

Example 3 (Three-Year Cycle for Selected Adjacent Properties): For the fiscal year (FY) 2010 section 8002 application, the local official selects 15 residential taxable adjacent properties to use as the basis for valuing a portion of the eligible Federal property, and provides the value and acreages of each of those properties for the previous year (2009). The local official must use those same properties for the following two application years (2011 and 2012), assuming that those properties retain the same assessment classification, remain taxable, and do not undergo a change in the original character upon which their selection was based. For each of those following two years, the local official updates the values and acreages of each selected residential taxable adjacent property based on the preceding year's tax data (2010 and 2011, respectively).

However, during that two-year period, one of the residential taxable adjacent properties changes in character because the residential improvement is destroyed. That change to the original character makes the property unsuitable to include in the selected group of residential taxable adjacent properties for the remaining two years of the three-year period. Accordingly, the local official substitutes a residential taxable adjacent property that is similar to the originally selected property (*i.e.*, an improved residential adjacent property of similar value and size) to retain the same number and variety of taxable adjacent properties in that expected-use category as originally selected.

(2)(i) When selecting taxable adjacent properties for the base year in accordance with paragraph (c)(2)(i) of this section, the local official may include taxable adjacent properties that are recent sales (as defined in paragraph (e)(3) of this section), among other taxable adjacent properties, up to the following proportion:

$$\frac{\text{number of recent sales in the tax jurisdiction(s) in each expected use category for the three most recent years for which data are available}}{\text{total number of taxable properties in the tax jurisdiction(s) in the expected use category for the most recent year for which data are available}}$$

Example 4 (Proportion of Recent Sales in Assessment Classification): Beginning with the most recent year for which data are available (2007), the local official determines that 40 taxable agricultural properties sold or otherwise transferred ownership in that tax jurisdiction during the three most recent years for which data are available (2005 through 2007) and that there were 500 taxable agricultural properties during 2007 (the most recent year for which data are available). (If a particular property sold more than once during the three most recent years for which data are available, the local official counts each sale.) The local official determines the proportion of sales for taxable agricultural property as follows:

$$\frac{\text{number of agricultural sales in last three years for which data are available (40)}}{\text{total number of agricultural properties in most recent year for which data are available (500)}} = \text{proportion of recent sales (.08 or 8 percent)}$$

(ii) The local official determines the number of recent sales the official may include with other selected taxable adjacent properties for that expected use category as follows:

$$\text{proportion (percentage) of recent sales for the expected use category (calculated under paragraph (d)(2)(i) of this section)} \times \text{total number of taxable adjacent properties selected for that expected use category}$$

If the resulting number is a fraction, the local official rounds down to the next smaller whole number to determine the maximum number of recent sales that the official may include for that expected use category.

Example 5 (Number of Recent Sales Local Official May Use To Determine the Base Value for Each Expected Use Category of Eligible Federal Property): The eligible section 8002 Federal property in the LEA is a federally owned forest. Based on the highest and best uses of taxable adjacent properties, three expected use categories (assessment classifications) of properties surround that forest: Residential, commercial, and agricultural. After identifying and excluding a non-assessed or tax-exempt proportion for each expected use category of the eligible Federal property, in accordance with paragraphs (a)(3) and (c)(1) of this section, the local official selects 10 taxable adjacent properties each for the residential and commercial use categories, and 20 taxable adjacent properties for the agricultural use category to determine the base value for the taxable portion of each expected use category of the eligible Federal property.

During the three most recent years for which data are available, 10 percent of the residential properties in the tax jurisdiction were sold, six percent of the commercial properties were sold, and eight percent of the agricultural properties were sold. As illustrated in the following chart, of the 10 residential adjacent properties selected, the local official may select only one recent sale (10 percent (.10) × 10 residential adjacent properties = one) to use in determining the base value for that expected use category of the eligible Federal property.

For the commercial classification, six percent of the taxable properties in the tax jurisdiction were recent sales. As illustrated in the following chart, the local official may not select any recent sales for that expected-use category because six percent (.06) of the 10 selected commercial adjacent properties is less than one whole number, and rounding down therefore results in 0 (six percent (.06) × 10 commercial adjacent properties =.6 of a property).

Finally, as illustrated in the following chart, for the 20 selected agricultural adjacent properties, the local official may use one recent sale for that expected-use category, because eight percent (.08) of the 20 properties equals 1.6 properties (eight percent (.08) × 20 agricultural adjacent properties = 1.6) and rounding down to the nearest whole number results in one property.

TABLE 5–1—NUMBER OF RECENT SALES LOCAL OFFICIAL MAY USE TO DETERMINE THE BASE VALUE FOR EACH EXPECTED USE CATEGORY OF ELIGIBLE FEDERAL PROPERTY

	Residential	Commercial	Agricultural
1. Percent (proportion) of recent sales for expected use category	10% (.10)	6% (.06)	8% (.08)
2. Total selected adjacent properties	10	10	20
3. Row 1 × Row 2	1.0	.6	1.6
4. Number of "recent sales" local official may include among other taxable adjacent properties in determining a base value for the expected use category of the eligible Federal property	1	0	1

(e) *Definitions.* The following terms used in this section are defined as follows:

(1) *Adjacent* means next to or close to the eligible Federal property as follows:

(i) In most cases, the term *adjacent* means the closest taxable parcels within the LEA.

(ii) The term *adjacent* means properties farther away from the eligible Federal property than described in paragraph (e)(1)(i) of this section only if the Secretary determines that it is necessary and reasonable to use those more distant properties to determine the EAV of eligible Federal property.

(iii) The Secretary considers the term *adjacent* to mean properties farther than two miles from the perimeter of the eligible Federal property or outside the LEA only in extremely rare circumstances determined by the Secretary.

Example 6 (Extremely Rare Circumstances): A very small LEA consists predominantly of non-taxable and tax-exempt property including eligible Federal property. The small taxable portion of the LEA is topographically dissimilar from the Federal property and classified for tax purposes differently than the eligible Federal property most likely would be if it were on the tax rolls, in the opinion of the local

official. Based on these facts, the LEA asserts that there are no suitable adjacent taxable properties and requests permission to use taxable properties in the adjoining LEA. After verifying the facts, the Secretary determines that extremely rare circumstances exist within the meaning of § 222.23(e)(1)(iii) and grants the LEA's request.

In an LEA bordering on the Pacific Ocean, the entire coastline is taken up by the eligible Federal property. Based on the absence of taxable oceanfront property in the LEA, the LEA seeks permission to use taxable oceanfront property in the adjoining LEA. After verifying the facts, the Secretary determines that extremely rare circumstances exist within the meaning of § 222.23(e)(1)(iii) and grants the LEA's request.

(2)(i) *Highest and best use* of adjacent property is determined based on a highest and best use standard in accordance with State or local law or guidelines of general applicability, if available, that is not used exclusively for the eligible Federal property and includes any improvements on that property to the extent consistent with those laws or guidelines. To the extent that State or local law or guidelines of general applicability are not available, highest and best use generally must be based on the current use of the taxable adjacent property (including any improvements).

(ii) In determining the highest and best use, the local official—

(A) Also may consider the most developed and profitable use for which the taxable adjacent property is physically adaptable, but only if that use is legally permissible and financially feasible, and for which there is a need or demand in the near future;

(B) May not base the highest and best use of taxable adjacent property on potential uses that are speculative or remote; and

(C) Must consider the extent to which the eligible Federal property is physically adaptable for those expected uses and the extent to which those uses would be needed if the property were not in Federal ownership.

Example 7 (Determining the Highest and Best Use of Taxable Adjacent Properties as the Basis for EAV): If a Federal installation to be valued is bordered by residential and commercial/industrial properties, the local official takes into consideration those various highest and best uses (residential and commercial/industrial) in determining the EAV of the eligible Federal property as described in paragraphs (a) and (c)(2)(i) of this section.

Under that process, using acres, the local official first determines the relative proportions of adjacent properties devoted to each of those highest and best uses. For example, the local official determines that the highest and best uses of the adjacent properties are residential (60 percent) and commercial/industrial (40 percent). However, before allocating the acres of the eligible Federal property (1,000 acres) to those uses as described in paragraphs (a)(2) and (b) of this section, the local official must consider whether the Federal property is adaptable for and there is a need for those uses, in accordance with paragraph (e)(2)(ii)(B) of this section.

For example, if the Federal property is hilly and rocky or contains a large area of marshland, it may not be practical for the property to be developed primarily as residential property. Using his or her professional judgment, the local official may decide that it would be more appropriate to designate 50 percent of the acres as vacant or woodland or some other taxable classification that would indicate that improvements would likely not be located on that property. This may also affect the proportion of the property that would be designated as commercial/industrial because some of those commercial/industrial uses would support the area designated for residential use. Thus, the local official designates the remaining 50 percent of the acres as 20 percent residential and 30 percent commercial/industrial.

After the local official determines the appropriate proportions of expected uses, the official then multiplies those proportions by the total number of eligible Federal acres (1,000) to determine the number of eligible Federal acres in each expected use category, resulting in the following: residential (20 percent or 200 acres), vacant (50 percent or 500 acres), and commercial/industrial (30 percent or 300 acres). The local official then determines the base value for the taxable use portion of each expected use category under paragraph (c)(2) of this section, beginning by selecting a sample of properties that represents the highest and best uses of the taxable adjacent properties.

In selecting the sample, the local official must consider whether the Federal property would support the same degree of development as the taxable adjacent properties selected (e.g., density, size, and improvements) and whether there would be a need for that type and degree of development in the near future. The local official then makes any necessary adjustments to the sample.

(3) *Recent sales* or *recently sold* means taxable properties that have transferred ownership within the three most recent years for which data are available.

Example 8 (Calculation of Section 8002 EAV for Eligible Federal Property): Two different Federal properties are located within an LEA—a Federal forest (100 eligible acres) and a naval facility (1,000 eligible acres). Based on the highest and best uses of taxable adjacent properties, and as described more specifically below, the local official establishes an EAV for the eligible Federal property in the LEA of $92,577,000 in the base year of a three-year cycle. That EAV is based on categorizing the Federal forest as 100 percent (100 acres) woodland expected use and the naval facility as 60 percent (600 acres) residential expected use and 40 percent (400 acres) commercial/industrial expected use.

The taxing jurisdiction determines the assessed value for taxable property by multiplying the value of the property by a single assessment ratio applicable to the property's assessment category. In this case, the applicable assessment ratios are: Woodland property—30 percent of the property's value; residential property—60 percent of the property's value; and commercial/industrial property—75 percent of the property's value.

Federal forest (100 eligible Federal acres). The local official first determines the type of expected-use categories (assessment classifications) and respective proportions to use in valuing the eligible Federal property, based on the highest and best use of the taxable adjacent properties. In this case, the local official categorizes 100 percent of the Federal forest as being in the woodland use category (assessment classification) based on the highest and best use of taxable adjacent properties. The local official multiplies that proportion by the total number of eligible Federal acres (100), to determine the number of Federal acres attributable to the woodland use category (100 acres).

The local official then determines a base value for each category of expected use of the eligible Federal property as described in paragraphs (a)(3), (c), and (d) of this section. The official first determines the taxable-use portion for each expected use category, as described in paragraph (c)(1) of this section, by excluding the proportion of the total area of each use category of the eligible Federal property that the official determines should be allocated to non-assessed or tax-exempt uses.

Based on the general proportion of non-assessed or tax-exempt uses for woodland property, the local official allocates 10 percent of the woodland acres for non-assessed or tax-exempt purposes, and multiplies that proportion by the total number of acres of eligible Federal property categorized as woodland (100 acres), resulting in 10 acres attributable to a non-assessed or tax-exempt proportion of woodland. The local official then subtracts that non-assessed or tax-exempt portion (10 acres) from the total acres of eligible Federal property in that expected-use category (100 acres), resulting in 90 acres attributable to the taxable portion of the woodland expected-use category.

The local official then selects a sample of taxable adjacent properties from the expected use category (woodland), as described in paragraphs (c)(2) and (d) of this section, and uses that sample to establish a base value for that category. The sample includes the minimum required number of taxable adjacent properties (generally at least 10) from the woodland category. In addition, in selecting that sample of properties, the local official uses only the allowable proportion of recent sales, calculated as described in paragraph (d)(2) of this section. In selecting the specific taxable adjacent properties that make up that sample and that reflect the highest and best uses of the adjacent taxable properties in accordance with paragraph (c)(2)(i) of this section, the local official also considers whether the Federal property is adaptable for and whether there would be a need for those specific types of properties, such as in size and improvements, in accordance with paragraph (e)(2)(ii)(B) of this section.

The local official calculates the average value per acre ($1,000) of the selected sample of taxable adjacent woodland properties. The local official then multiplies the number of acres attributable to the taxable portion of the

woodland expected use category (90 acres) by the average value per acre ($1,000) of the selected taxable woodland adjacent properties, resulting in a base value for the woodland use category of the Federal forest of $90,000.

The local official then determines the section 8002 EAV for the Federal forest as described in paragraph (a)(4) of this section by multiplying the base value established for the woodland portion of the property ($90,000) by 30 percent (the assessment ratio for woodland property), resulting in a section 8002 EAV of $27,000 for the Federal forest.

Naval facility (1,000 total eligible Federal acres).

The local official first determines the type of expected-use categories (assessment classifications) and respective proportions to use in valuing the eligible Federal property. For the naval facility, the local official determines that the relative mix of taxable adjacent properties, based on their highest and best uses, is 60 percent residential and 40 percent commercial/industrial. The local official multiplies those proportions by the total eligible Federal acres in the naval facility (1,000), resulting in 600 acres (60 percent × 1,000 acres = 600 acres) to be valued as residential expected use and 400 acres (40 percent × 1,000 acres = 400 acres) to be valued as commercial/industrial expected use.

The local official then determines a base value for each of those expected use categories of the eligible Federal property. For the residential expected-use category, the local official allocates 20 percent for non-assessed or tax-exempt uses, and multiplies that proportion by the number of eligible Federal acres allocated to that expected-use category (600 acres), resulting in 120 acres allocated to non-assessed or tax-exempt uses. The local official excludes those 120 acres by subtracting them from the total number of residential acres (600 acres), resulting in 480 acres allocated to taxable residential uses for the residential portion of the eligible Federal property in the naval facility.

For the commercial/industrial expected-use category, the local official allocates 15 percent for non-assessed or tax-exempt uses, and multiplies that proportion by the number of eligible Federal acres allocated to that expected-use category (400 acres), resulting in 60 acres allocated to non-assessed or tax-exempt uses. The local official excludes those 60 acres by subtracting them from the total number of commercial/industrial acres (400 acres), resulting in 340 acres allocated to taxable commercial/industrial uses for the commercial/industrial portion of the eligible Federal property in the naval facility.

The local official then selects a sample of taxable adjacent properties from each identified use category, as described in paragraphs (c)(2) and (d) of this section, which the official uses to establish a base value for each of those expected-use categories. That sample includes the minimum required number of taxable adjacent properties (generally at least 10) for each expected use category. In addition, in selecting the sample of properties, the official uses only the allowable proportion of recent sales, calculated as described in paragraph (d)(2) of this section.

In considering whether the specific group of taxable adjacent properties selected reflects the highest and best uses of the adjacent taxable properties in accordance with paragraph (c)(2)(i) of this section, the local official also considers whether the Federal property is adaptable for and whether there would be a need for those specific types of properties, in accordance with paragraph (e)(2)(ii)(B) of this section.

For example, if the official selects 10 residential parcels that are all small, such as one quarter (.25) of an acre or less, and uses those parcels to determine an EAV for a large area of Federal property, the result may exaggerate what would likely happen to that property if it were available for development. If the official uses only these small parcels (e.g., .25 acres each) for the 480 acres allocated to taxable residential uses for the residential portion of the eligible Federal property, the official would be projecting that approximately 1,920 small residential lots would be developed on that Federal property (.25 × 480 = 1,920) if the property were no longer in Federal ownership. The Department believes that it would be extremely unlikely that 480 acres of the property would develop into this number of residential properties. This outcome would not reflect the local official's best judgment of the reasonable development of the property. To avoid this inappropriate result, the official would identify other taxable adjacent parcels of varying sizes to provide a more accurate picture of how the Federal property would be developed if it were on the tax rolls.

Similarly, with respect to improvements, if the local official selected taxable adjacent properties that all were improved parcels, the official would be projecting that all of the 480 acres allocated to taxable residential uses for the residential portion of the eligible Federal property would be improved. If the residential taxable adjacent parcels are a mixture of improved and unimproved properties, that projection also may be speculative based on the number of improvements that reasonably would be needed for the current and any expected new population. If the assumption is not reasonable that the entire 480 acres would be improved, then the local official would make adjustments accordingly in the sample of taxable adjacent properties by adding some unimproved residential parcels to the sample.

For the portion of the naval facility allocated to taxable residential use, the local official calculates the average per-acre value ($100,000) of the selected sample of residential adjacent properties as described in paragraph (c)(2)(ii) of this section. The local official then multiplies the number of acres allocated to the taxable residential portion (480 acres) by the average value per acre ($100,000) of the sample of residential adjacent properties to determine the base value ($48,000,000) for that portion of the eligible Federal property, as described in paragraph (c)(2)(iii) of this section. The local official determines a section 8002 EAV for that residential portion by multiplying the $48 million by 60 percent (assessment ratio for residential property), resulting in $28,800,000 as described in paragraph (a)(4) of this section.

Similarly, for the portion of the naval facility allocated to taxable commercial/industrial use, the local official calculates an aggregate per acre value ($250,000) of the selected sample of commercial/industrial taxable adjacent properties as described in paragraph (c)(2)(ii) of this section. The local official then multiplies the number of eligible Federal property acres allocated to the taxable commercial/industrial portion (340 acres) by the average value per acre of the selected commercial/industrial adjacent properties ($250,000) to determine the base value for that portion of the eligible Federal property ($85,000,000), as described in paragraph (c)(2)(iii) of this section. The local official determines a section 8002 EAV for that commercial/industrial portion by multiplying the $85,000,000 by 75 percent (the assessment ratio for commercial/industrial property), resulting in $63,750,000 as described in paragraph (a)(4) of this section.

The local official then calculates the total section 8002 EAV for the entire naval facility as described in paragraph (a)(5) of this section by adding the figures for the residential portion ($28,800,000) and the commercial/ industrial portion ($63,750,000), resulting in a total section 8002 EAV for the entire naval facility of $92,550,000.

Total section 8002 property in the LEA. Finally, the local official determines the aggregate section 8002 assessed value for the LEA as described in paragraph (a)(6) of this section by adding the section 8002 EAV for the Federal forest ($27,000), and the total section 8002 EAV for the naval facility ($92,550,000), resulting in an aggregate assessed value of $92,577,000.

This entire process is illustrated in Tables 8–1 and 8–2 below:

TABLE 8–1—ALLOCATION OF SECTION 8002 ELIGIBLE FEDERAL PROPERTY TO NON-TAXABLE AND TAXABLE USES FOR DETERMINING BASE VALUES

Tax classifications of adjacent properties based on highest and best use	Proportion of eligible Federal property allocated to property use categories (percent)	Total acres allocated to property use categories (Col. 2 × eligible acres)	Proportion allocated to non-assessed or tax-exempt uses (percent)	Acres allocated to non-assessed or tax-exempt uses (Col. 4 × Col. 3)	Acres allocated to taxable uses and used to determine base values (Col. 3 − Col. 5)
(1)	(2)	(3)	(4)	(5)	(6)
Federal Forest (100 eligible acres)					
Woodland	100	100	10	10	90
Subtotal		100		10	90
Naval Facility (1,000 eligible acres)					
Residential	60	600	20	120	480
Commercial/industrial	40	400	15	60	340
Subtotal	100	1,000		180	820
Total		1,100		190	910

TABLE 8–2—CALCULATION OF SECTION 8002 BASE VALUES, SECTION 8002 ESTIMATED ASSESSED VALUES (EAVS), AND AGGREGATE ASSESSED VALUE

Classification of adjacent parcels	Federal acres allocated for taxable use (Table 7–1, Col. 6)	Average value/acre of taxable adjacent parcels	Base value of eligible Federal property (Col. 3 × Col. 4)	Assessment ratio (percent)	Section 8002 EAVs and aggregate assessed value
(1)	(2)	(3)	(4)	(5)	(6)
Federal Forest (90 eligible acres allocated for *taxable* use (see Table 7–1, column 6))					
Woodland	90	$1,000	$90,000	30	$27,000
Subtotal	90		90,000		27,000
Naval Facility (820 eligible Federal acres allocated for *taxable* use (see Table 6–1, column 6))					
Residential	480	100,000	48,000,000	60	28,800,000
Commercial/Industrial	340	250,000	85,000,000	75	63,750,000
Subtotal	820		133,000,000		92,550,000
Total (Aggregate Assessed Value)			133,090,000		92,577,000

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