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# Part III

# Department of Education

## 34 CFR Part 222
## Impact Aid Programs; Proposed Rule

## DEPARTMENT OF EDUCATION

### 34 CFR Part 222

**[DOCKET ID ED–2008–OESE–0008]**

**RIN 1810–AB00**

## Impact Aid Programs

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend 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 proposed 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:** We must receive your comments on or before July 2, 2008.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Catherine Schagh, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6244.

**Privacy Note:** The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

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

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:**

### Invitation To Comment

We invite you to submit comments about these proposed regulations. The Secretary is particularly interested in comments on proposed § 222.23, in the following areas:

- *§ 222.23(a)(3) and (c)(1) (Excluding from the base value of the expected use categories of the eligible Federal property a portion allocated to accommodate anticipated non-assessed or tax-exempt uses):*

(1) Based on the highest and best use of taxable adjacent properties, can local officials determine the proportion of the eligible Federal property in each use category that likely would be exempt from local real property taxes (e.g., roads, parks, and other municipal uses) if the Federal property were privatized?

(2) Would it 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? If so, what would be reasonable figures to use for this purpose?

- *§ 222.23(c)(2)(i) (Minimum number of adjacent properties):*

(1) Could local officials readily find a minimum number of adjacent properties for each identified use category (assessment classification) for determining the base values of those categories and the estimated assessed value (EAV) of the eligible Federal property?

(2) If so, is 10 a reasonable minimum number of adjacent properties for each identified use category of adjacent property?

(3) If 10 is not a reasonable minimum number, what other minimum number would be reasonable?

(4) Should different minimum numbers of taxable adjacent properties be applied to different LEAs (*e.g.*, LEAs that contain taxable property of less than $100 million in total assessed value might be required to use at least 10 properties, and LEAs that contain taxable property equal to $100 million or more in total assessed value might be required to use at least 30 properties)?

- *§ 222.23(d)(2) (Using recent sales):*

Is it possible for a local official to identify readily the data needed to determine the proportion of sales that are ''recent sales'' as defined in proposed § 222.23(e)(3) (that is, the number of taxable properties in an assessment classification that have transferred ownership within the three most recent years for which data are available) for each type of taxable adjacent property and the total number of properties in that assessment classification?

- *§ 222.23(e)(1) (Definition of ''adjacent''):*

(1) Could local officials implement a definition of *adjacent* property that generally means the closest taxable parcels, and includes parcels further than one mile from the perimeter of the Federal property only in extremely rare circumstances?

(2) Would the proposed definition allow the local official generally to select at least 10 taxable properties in each expected use category (assessment classification) to determine a base value for that category?

(3) If not, what maximum distance from the perimeter of the eligible Federal property would be reasonable for adjacent properties?

Affected LEAs will have ample opportunity to comment on the specific provisions of the proposed regulations and to share the document with their local assessment officials. We expect that the final regulations will be effective for fiscal year (FY) 2010 applications, which we anticipate will be due February 2, 2009. In addition, the proposed changes generally would affect only the last step of the payment formula and, thus, would have a limited impact on overall applicant revenues.

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while

preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 3E107, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

These proposed regulations would amend regulations implementing the Payments for Federal Property portion of the Impact Aid program, authorized under section 8002 of the Act. Current regulations implementing the section 8002 program are found in 34 CFR 222.20 through 222.23.

As described more fully in this notice under *Summary of Proposed Regulations*, the Secretary proposes revisions to § 222.21, concerning how an LEA establishes eligibility for section 8002 payments, and § 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. In accordance with the Department's Principles for Regulating, these proposed regulations are essential to promoting quality and equality of opportunity in education.

The amendments to § 222.21 would provide greater flexibility to applicants in documenting their eligibility for assistance under section 8002 of the Act, thereby providing more equitable treatment for applicants that are affected by specific record retention policies. The amendments to § 222.23 would provide more specificity for local tax officials who establish the EAV of Federal property, and would result in greater uniformity in the methods used to establish those values, eliminate inequities in current practices, and make the determinations of EAVs more consistent and reliable.

**Summary of Proposed Regulations**

Following is a summary of the proposed regulatory provisions. We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

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

*Statute:* Section 8002(a)(1) of the Act provides that LEAs are eligible for assistance if, among other things, the United States owns property in that LEA that has been acquired since 1938 and that had an assessed value (determined as of the time or times of acquisition) aggregating 10 percent or more of the assessed value of all real property in the LEA (at the time or times of acquisition or, in certain specified cases, in the first year preceding or succeeding acquisition).

*Current Regulations:* Section 222.21(d) lists the documents that an applicant must submit to demonstrate that the 10 percent threshold described in the Act has been satisfied. Section 222.21(d)(1) provides that new applicants may use only original records prepared by legally authorized officials at the time of Federal acquisition, or facsimiles such as microfilms of those records. Redeterminations of eligibility may be based only on records of the type described in § 222.21(d)(1) or Departmental records. Section 222.21(e) provides that the Secretary does not base determinations or redeterminations of eligibility on secondary documentation such as estimates, certifications, or appraisals.

*Proposed Regulations:* We propose to amend § 222.21(d)(1) to expand the scope of records upon which the Secretary determines or redetermines eligibility under section 8002(a)(1) of the Act. Under the proposed regulations, if the forms of records currently specified in the regulations are unavailable, the Secretary would have the discretion to base the determinations on other records the Secretary deems 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. In addition, we propose to amend § 222.21(e) to provide that the Secretary does not base a determination or redetermination of eligibility on secondary documentation if that documentation is in the nature of an opinion, such as estimates, certifications, or appraisals.

*Reasons:* The Secretary is proposing these regulations to provide greater flexibility to applicants in documenting their eligibility for assistance under section 8002 of the Act, thereby promoting quality and equality in education. These changes would allow eligibility to be based on alternative records to the original tax records if such other reliable alternative records exist. In some jurisdictions, record retention standards are resulting in the planned destruction of tax records, which under the current regulations makes it difficult and sometimes impossible for new applicants to establish eligibility for section 8002 payments. This increased flexibility would allow those applicants to establish eligibility if they can locate alternative reliable records.

However, under proposed § 222.21(e), secondary documentation that is in the nature of an opinion, such as estimates, certifications, or appraisals, could not be used as the basis for establishing section 8002 eligibility. Such records are not reliable evidence of a property's actual assessed value for taxation purposes, upon which an LEA's eligibility for assistance under section 8002 is based.

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

*Statute:* The amount of an LEA's section 8002 assistance is based, in part, on a determination of the aggregate assessed value of the eligible Federal property in the LEA. Section 8002(b)(3) of the Act provides that the local official responsible for assessing the value of real property for the purpose of levying property taxes shall determine that aggregate assessed value of the eligible Federal property on the basis of the highest and best use of property adjacent to the eligible Federal property as of the time that the value is determined.

*Current Regulations:* Section 222.23 describes how the local official determines the aggregate assessed value of eligible Federal property. In brief, the regulations provide that the local official first determines (estimates) a fair market value (FMV) of the eligible Federal property based on the highest and best use of taxable properties adjacent to the eligible Federal property (§ 222.23(a)(1)). The local official then determines a section 8002 assessed value for each eligible Federal property by adjusting the FMV by any

percentage, ratio, index, or other factor that is used for taxable property. The regulations provide that, in making this adjustment, the official may assume that there was a transfer of ownership of the eligible Federal property for the year in which the section 8002 assessed value is being determined (§ 222.23(a)(2)). The official then calculates a section 8002 aggregate assessed value for all eligible Federal property in the LEA by totaling the section 8002 assessed values for all eligible Federal property in the LEA (§ 222.23(a)(3)). The regulations also provide definitions of the terms *adjacent* and *highest and best use* (§ 222.23(b)(1) and (2), respectively) and examples to further explain the regulatory requirements and definitions.

*Proposed Regulations and Rationale:* We propose a number of changes to § 222.23. First, we propose in new paragraphs (a)(1) through (a)(6) to outline the process local officials must use in determining the aggregate assessed value of Federal property and to clarify that the aggregate assessed value of the Federal property that the local officials determine is an estimate (estimated assessed value or EAV). The EAV established for section 8002 payment purposes is different than a tax-exempt value that a jurisdiction may be required by State law to establish for the Federal property and carry on its tax-exempt property rolls. Next we propose to redesignate current paragraph (b) (Definitions) as paragraph (e), and to add new paragraphs (b), (c), and (d) that describe in detail the specific steps in the overall process outlined in new paragraph (a).

We are proposing these amendments to provide more specificity for local tax officials who establish the EAV of Federal property and greater uniformity in the establishment of those values, eliminate inequitable inflation in the value of the eligible Federal property, and provide more reliability in the determination of EAVs. These improvements in determining EAVs will promote quality and equality in education. Our rationale for specific provisions is described in the following discussion.

*General (§ 222.23(a))*

Proposed paragraphs (a)(1) through (a)(6) would describe the overall process local officials would use to determine the aggregate EAV of eligible Federal property. Proposed paragraph (a)(1) would provide, as required by section 8002(b)(3) of the Act, that a local official who is responsible for assessing the value of real property located in the jurisdiction of the LEA for levying a property tax makes the determination of the section 8002 aggregate EAV.

Proposed paragraph (a)(2) would specify that the local official first would categorize proportionately the types of expected uses of the eligible Federal property in each Federal installation or area in the LEA, based on the highest and best uses of taxable properties adjacent to the eligible Federal property, and then allocate the eligible Federal property acres accordingly to each of those expected uses. The specific process for categorizing the expected uses and allocating the Federal acres to those proportions would be described in proposed paragraph (b).

Under proposed paragraph (a)(3), the local official would determine a base value for each category of expected use of the eligible Federal property in each Federal installation or area. The specific process for establishing the base values of the expected use categories would be described in proposed paragraphs (c) and (d). As explained in more detail later in this section, this process would exclude a proportion for non-assessed and tax-exempt uses and specify a minimum sample size, a three-year cycle, and an allowable number of recent sales.

Proposed paragraph (a)(4) would describe how the local official determines a section 8002 EAV for each category of expected use of the eligible Federal property in each Federal installation or area. Under this provision, the local official would determine the EAV by adjusting the base value for that category, which is established as described in paragraph (a)(3), by any percentage, ratio, index, or other factor that the official would use to determine the assessed value if the eligible Federal property were taxable.

Under proposed paragraph (a)(5), the local official determines a total section 8002 EAV for each Federal installation or area by adding the assessed values determined for each category of eligible Federal property in that Federal installation or area. Finally, proposed paragraph (a)(6) describes how the local official determines the section 8002 aggregate EAV for all Federal property in the LEA.

*Categorizing Expected Uses (§ 222.23(b))*

Proposed paragraph (b) would detail how local officials would categorize proportionately the types of expected uses of eligible Federal property based on the highest and best uses of taxable adjacent properties. Once this step is complete, the local official would multiply each proportion of the taxable adjacent properties by the total acres of the eligible Federal property to derive the number of acres in each category for the eligible Federal property.

*Determining the Base Value for Expected Use Categories (§ 222.23(c))*

Proposed paragraph (c) details how the local official would establish a base value for each category of expected use of the eligible Federal property. First, as explained in proposed paragraph (c)(1), the local official would identify the taxable use portions of the eligible Federal property by allocating a proportion of the eligible Federal property acres identified for each use category to expected non-assessed or tax-exempt uses, such as schools, parks, churches, and roads. The local official would base these proportions on the amount of area the official believes normally would comprise the non-assessed or tax-exempt uses in that assessment category. (The non-assessed or tax-exempt proportions would likely vary for different categories of taxable property.) The local official then would multiply the non-assessed or tax-exempt proportion(s) by the number of acres in each expected use category of the eligible Federal property to determine the number of acres attributable to non-assessed or tax-exempt uses. Next, the local official would subtract the number of acres attributable to non-assessed or tax-exempt uses from the number of acres of eligible Federal property in each expected use category to determine the taxable use portion of that category.

Under proposed paragraph (c)(2), for the portions of the eligible Federal property allocated for taxable uses, the local official would calculate a base value for each expected use category from a selected sample of taxable adjacent properties representing the highest and best uses of the taxable adjacent properties for each category.

*Minimum number of taxable adjacent properties.* Currently, as a matter of policy, we encourage local officials to select at least three taxable adjacent parcels to determine the base value for each expected use category (assessment classification) for the eligible Federal property. Some local officials use significantly more than three parcels. We believe that a sample size of more than three would lead to greater reliability in the resulting base value figure and in the overall EAV of the eligible Federal property. The purpose of the proposed changes is to standardize, at a reasonable number of 10, the minimum number of taxable adjacent properties that all section 8002 applicants must use to establish those base value figures.

Accordingly, under proposed paragraph (c)(2)(i), we would require all

local officials to use at least 10 taxable adjacent properties to determine the base value of each expected use category (assessment classification). As described elsewhere in the preamble under *Invitation to Comment*, we specifically request comments on this proposed minimum number.

Under the proposed regulations in paragraph (c)(2)(i), if at least three but fewer than 10 taxable adjacent properties are available for an expected use category, the local official would identify the taxable adjacent property with the lowest value per acre and replicate that property as many times as necessary to reach a total of 10 properties in combination with the available taxable adjacent parcels.

If fewer than three taxable adjacent properties exist in a particular expected use category, generally the local official would not use that category in determining the assessed value of the eligible Federal property. However, the proposed regulations provide that, in extremely rare circumstances, the local official could use fewer than three parcels for a particular use category if the Secretary determines it to be necessary and reasonable.

For example, if one taxable property adjacent to the eligible Federal property is a golf course, which is a separate assessment classification in that jurisdiction, the Secretary could determine that it was necessary and reasonable to allow the local official to use only that one golf course for that applicable use category rather than disallowing the category for lack of a sufficient number of taxable adjacent properties. (Under the proposed changes to the definition of *highest and best use* in paragraph (e)(2)(iii), the local official would also have to have determined that the Federal property is physically adaptable for use as a golf course and that there would be a need or demand for a golf course if the property were not federally owned.)

After selecting the adjacent properties for each expected use category to serve as the basis for valuing the eligible Federal property, the local official would calculate an average per acre value for the taxable portion of each expected use category in accordance with proposed paragraph (c)(2)(ii). The local official then would determine the base value for each expected use category by multiplying the average per acre value by the number of acres of eligible Federal property in that expected use category, as described in proposed paragraph (c)(2)(iii).

*Additional Procedures for Determining Base Values (§ 222.23(d))*

Proposed paragraph (d) would detail the following additional procedures that the local official would be required to apply in establishing a base value for each category of expected use of the eligible Federal property.

*Three-year cycle.* Under proposed paragraph (d)(1), the local official would allocate expected uses for the eligible Federal property and select taxable adjacent properties only once every three years. The year for which that determination occurs would be referred to as the base year. In the following two years, the local official would determine the section 8002 EAV of eligible Federal property under section 8002(b)(3) of the Act by using the same allocation of expected uses and the same adjacent properties selected for the base year, but updating the values and acreage of the selected taxable adjacent properties.

Under this proposal, in non-base years (that is, the two program application years following the base year), the local official could remove a taxable adjacent property selected for the base year only if that adjacent property became unsuitable for determining the base value for the expected use category of the eligible Federal property. A taxable adjacent property would be considered unsuitable only under the following circumstances:

(1) a changed assessment classification (for example, an originally selected agricultural parcel was subdivided into residential parcels);

(2) a change to tax-exempt status; or

(3) a change in the original character upon which its selection was based (for example, the improvement on an originally selected improved parcel is destroyed, or an improvement is built on an originally selected unimproved parcel).

If a previously selected adjacent property became unsuitable during the three-year cycle, the local official would be required to substitute a suitable taxable adjacent parcel of the same assessment classification as the original adjacent property. In the absence of any suitable parcel for substitution, the requirements for using a minimum number of taxable adjacent properties (minimum sample size) in proposed paragraph (c)(2)(i) would still apply.

*Limiting transfer-of-ownership assumption (recent sales).* Second, under proposed paragraph (d)(2), local officials would no longer be permitted to assume a total transfer in ownership of the eligible Federal property. Currently, § 222.23(a)(2) allows tax officials to assume a transfer of ownership of the eligible Federal property for the year in which the section 8002 EAV is being determined, by using taxable adjacent properties that all have recently sold. This option originally was included in the regulations to provide flexibility to localities in determining the valuation of the eligible Federal property, including those jurisdictions that re-assess real property primarily upon resale.

Under this assumption, some LEAs have selected all new adjacent parcels each year that are only recent sales. This practice has resulted in disparities among LEAs in the relative rate of increase of maximum section 8002 payments. We do not believe that it is reasonable to assume that the eligible Federal property, if privatized, would change ownership in its entirety every year.

Therefore, we propose to replace current § 222.23(a)(2) with paragraph (d)(2)(i), to allow local officials to use a maximum number of recent sales to determine the base value for each identified expected use category. That number is based on the proportion that results when the number of taxable properties in each expected use category that has transferred ownership (i.e., sold) over a three year-period is divided by the total number of taxable properties in the specific expected use category for the most recent year for which data are available. The three-year period would be established by an accompanying new definition of *recent* sales in proposed paragraph (e)(3), which would define *recent sales* or *recently sold* as meaning taxable properties that have transferred ownership within the three most recent years for which data are available. Under proposed paragraph (d)(2)(ii), the local official then would multiply the total number of taxable adjacent properties selected by that proportion to determine how many recently sold taxable adjacent properties the official could include among the taxable adjacent properties used to establish the base value for that expected use category.

As required by section 8002(b)(3) of the Act, this proposed approach still results in the EAV of the eligible Federal property being based on the highest and best use of adjacent properties. Under the proposed approach, the local official would take those highest and best uses of adjacent properties into consideration by using them as the basis for categorizing and allocating the expected uses of the eligible Federal property, and then by establishing base values for those expected use categories with a

selected sample of those adjacent properties.

If applying the recent sales proportion to the total number of selected adjacent properties results in a fraction, proposed paragraph (d)(2)(ii) would require the local official to round the fraction down to the nearest whole number. For example, if the proportion of recent sales over a three-year period in an expected use category is six percent and the local official selects 10 adjacent properties, only .6 of those adjacent properties, or zero adjacent properties (by operation of rounding down) could be recent sales.

In some cases, an LEA may be located in and have eligible Federal property in more than one taxing jurisdiction. In those cases, by operation of State law, more than one local official is responsible for establishing the EAV for eligible Federal property in that LEA and, therefore, would establish separate EAVs for the eligible section 8002 Federal property in each respective taxing jurisdiction.

*Definitions (§ 222.23(e))*

We propose the following changes to redesignated paragraph (e):

• *Adjacent* (redesignated paragraph (e)(1)). The definition of *adjacent* would be amended to provide that, in most cases, *adjacent* means the taxable parcels within the LEA that are closest to the eligible Federal property. The proposed definition would specify that *adjacent* properties means properties further away from the eligible Federal property only if the Secretary determines that it is reasonable and necessary to use those properties for determining the EAV of eligible Federal property. Under the proposed definition, the term *adjacent* would mean further away than one mile from the perimeter of the eligible Federal property, or outside the LEA, only in extremely rare circumstances determined by the Secretary. This provision would help ensure that the adjacent property upon which the valuation of the eligible Federal property is based is close to the eligible Federal property and will more truly reflect what the Federal property could become if privatized.

• *Highest and best use* (redesignated paragraph (e)(2)). We propose to amend the definition of *highest and best use.* The current definition of this term in § 222.23(b)(2)(i) provides that the highest and best use of an adjacent parcel of taxable land means the fair market value based upon a ''highest and best use'' standard in accordance with State or local law and guidelines, if available, or otherwise generally a reasonable fair market value based upon the current use of the property.

Although the current definition is a reasonable interpretation of section 8002(b)(3) of the Act that requires the EAV of Federal property to be determined ''on the basis of'' the highest and best use of adjacent taxable property, LEAs have interpreted the provision to mean that each year they may base the EAV of Federal property exclusively on the assessed value of adjacent taxable properties that have recently transferred ownership. In some cases, this has led to unreasonably inflated EAVs of eligible property. We view this approach to be unreasonable as it is effectively based on the implausible assumption that an entire Federal property, which is often a quite extensive tract of land, changes hands in its entirety every year.

Accordingly, the Secretary is proposing to amend the definition of *highest and best use* in redesignated paragraph (e)(2)(i) by eliminating the references to ''fair market value.'' Local officials still would be required to use the highest and best use of taxable adjacent properties to categorize the expected uses of the eligible Federal property under proposed paragraphs (a)(2) and (b), and to establish the base values of the expected use categories of that eligible Federal property under proposed paragraphs (a)(3), (c), and (d). This approach would be consistent with the Act and permit a reasonable limitation on the use of recently sold adjacent properties in establishing the EAV of eligible property.

As noted, current § 222.23(b)(2)(i) provides that *highest and best use* is established in accordance with available State or local laws or guidelines, and includes any improvements consistent with those laws or guidelines. An additional proposed amendment to this paragraph would clarify that State or local laws or guidelines must be of general applicability and not used exclusively to value eligible Federal property. We are proposing this change to ensure consistency between the methods States and local jurisdictions use to establish highest and best use values for the eligible Federal property and the methods that they ordinarily use to value non-Federal property in the jurisdiction.

In addition, we propose to amend this definition to clarify that, to the extent State or local law or guidelines of general applicability are not available, the determination of the highest and best use would be based on the current use of the adjacent parcels, including any improvements. This clarification is consistent with current practice.

We also propose to amend the definition of *highest and best use* (in redesignated paragraph (e)(2)(i) and (iii)) to clarify that the local official may consider the most developed and profitable use for which the taxable adjacent property is physically adaptable only if that use is legally permissible and financially feasible, and for which there is a need or demand in the near future. The local official also takes into consideration the same factors with respect to the eligible Federal property. As with the adjacent properties, the proposed regulations would require that the Federal property be physically adaptable for the various uses upon which its EAV is being based and that there be a need or demand in the near future for those uses if the property was not in Federal ownership. We believe that these additional requirements are necessary to reflect realistic highest and best use values of the adjacent properties, and to apply those values realistically to the eligible Federal property. The proposed regulations would prohibit a local official from basing the highest and best use on potential uses that are speculative or remote.

• *Recent sales* or *recently sold* (new paragraph (e)(3)). Finally, as noted previously, proposed paragraph (e)(3) would define *recent sales* or *recently sold* to mean taxable properties that have transferred ownership within the most recent three years for which data are available. This timeframe for recent sales should benefit small LEAs that have fewer taxable properties and fewer annual sales than larger, more developed LEAs tend to have.

We also have added more examples throughout the proposed regulations, and a number of illustrative tables, to assist LEAs and local tax officials in understanding these proposed changes.

**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.

*1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively, fairly, and efficiently.

In general, the proposed regulations would 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 would 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 would be offset by the accompanying regulatory change to reduce the selection cycle from every year to once every three years.

These proposed 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. In assessing the potential costs and benefits, both quantitative and qualitative, of this regulatory action, we have determined that the benefits would 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.

*2. Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 222.21 What requirements must a local educational agency meet concerning Federal acquisition of real property within the local educational agency?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The entities that would be affected by these proposed regulations are LEAs receiving Federal funds under this program, a substantial number of which (over 90 percent) are small entities.

However, the proposed regulations would not have a significant economic impact on those small entities because the proposed regulations generally would decrease rather than increase any regulatory burden and decrease the necessity for Federal supervision. This is because the proposed regulations would establish a three-year cycle, rather than the current annual cycle, for section 8002 applicants to submit information on the taxable adjacent parcels upon which the Federal property valuation is based.

Overall, the regulations will benefit small LEAs by providing more uniformity, consistency and reliability in Federal property valuation for all section 8002 applicants, by allocating a proportion of the Federal property for expected non-assessed or tax-exempt uses, standardizing the minimum sample size of taxable properties and providing more uniformity in the proportions of recently sold properties that may be selected. These proposed changes will result in a more equitable distribution of the limited funds available, including for small LEAs.

In any case, although limiting the number of recent sales that an LEA may use and other changes that would be made by these proposed regulations may result in reduced Federal property valuations in some cases, the proposed changes generally would have only a minor economic effect on most section 8002 applicants, including small LEAs. This is because small LEAs depend much more heavily on State and local revenue than on Federal revenue. In addition, for most LEAs, these proposed regulations affect only that portion of Federal section 8002 revenue that is distributed under the last step of the payment formula (section 8002(h)(4)(B) of the Act), which is based on the maximum section 8002 payment calculation that takes into account the Federal property valuation. Those affected section 8002 revenues constitute less than one percent of the average total annual revenue from all sources received by these small LEAs, and, for that reason, any reduction in those revenues would not have a significant economic impact.

**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 regulation that requires it (34 CFR 222.3) are approved under OMB number 1810–0036, with an expiration date of June 30, 2008. 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.

Proposed § 222.23 would make 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 would not result in an increase in the paperwork collection burden.

Proposed § 222.23(a)(3) and (c)(1) would 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 propose 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, proposed § 222.23(c)(2)(i) would require 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 propose 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 payments 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 proposed § 222.23(d)(1), moving from an annual to a three-year sample selection cycle; and (2) in proposed § 222.23(d)(2), limiting the number of recent sales that a local official may select in each base selection year, which likely will lead to fewer new selections of sample properties.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

### Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

### Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

### Electronic Access to This Document

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You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/8002/legislation.html.*

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(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: May 28, 2008.

**Kerri L. Briggs,**

*Assistant Secretary for Elementary and Secondary Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend 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).

The revisions 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) Except as provided under paragraph (a)(2) of this section, the Secretary's determinations and redeterminations of eligibility under this section are based on the following documents:

(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 for levying 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 proportionately 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 the amount of 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 7 and Table 7–2 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 7 and Table 7–2 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 types of tax assessment classifications representing 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, devoted to each of those tax assessment classifications that represent the highest and best uses (*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 LEA.

(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.—PROPORTION OF RESIDENTIAL CATEGORY OF SECTION 8002 ELIGIBLE FEDERAL PROPERTY ALLOCATED TO NON-ASSESSED OR TAX-EXEMPT USES

| (1) | Allocated proportion (2) | Eligible Federal acres allocated to expected use category (col. 2 x 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 of each selected taxable adjacent property that is recorded on the assessment records for that 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 exist 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 10 in number. In extremely rare circumstances, the local official may use fewer than three parcels for a particular tax assessment classification if doing so is determined by the Secretary to be necessary and reasonable.

*Example 2 (Minimum Sample Size of Adjacent Properties):* The eligible Federal property is surrounded by properties that are classified for tax purposes according to their highest and best uses 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 exist. 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 10 properties for that classification.

(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 equalization factors, if relevant) and acres of the actual and any replicated adjacent properties and 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 (1) | Value (2) | Acres (3) | Value per acre (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 for the taxable portion of the expected use category by the number of acres of eligible Federal property in 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 changes assessment classification, becomes tax-exempt, or undergoes 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:

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

*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:

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

(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 nearest 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 ten taxable adjacent properties each for the residential and commercial use categories, and 20 taxable adjacent properties for the agricultural use category in determining 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, ten 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 ten residential adjacent properties selected, the local official may select only one recent sale (ten 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 | Proportion (percent) of recent sales for expected use category | 10% (.10) | 6% (.06) | 8% (.08) |
| 2 | Total selected adjacent properties | 10 | 10 | 20 |
| 3 | Row 1 x 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 further 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 further than one mile from the perimeter of the eligible Federal property or outside the LEA only in extremely rare circumstances determined by the Secretary.

(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). In determining the highest and best use, the local official also may consider the most developed and profitable use for which the taxable adjacent property is physically adaptable, if that use is legally permissible and financially feasible, and for which there is a need or demand in the near future.

(ii) The local official—

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

(B) 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 6 (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 7 (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, and 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 at least the minimum required number of taxable adjacent properties (generally at least ten) 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 at least 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 paragraphs (c)(2)(i) and (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 × 1,920 = 480) if the property was no longer in Federal ownership. The Department believes that it may be extremely speculative that 480 acres of the property would develop into this number of residential properties, and that this result would not reflect the local official's intention. In that case, 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 aggregate 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 7–1 and 7–2 below:

TABLE 7–1.—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 (1) | Proportion of eligible Federal property allocated to property use categories (2) | Total acres allocated to property use categories (col. 2 × eligible acres) (3) | Proportion allocated to non-assessed or tax-exempt uses (4) | Acres allocated to non-assessed or tax-exempt uses (col. 4 × col. 3) (5) | Acres allocated to taxable uses and used to determine base values (col. 3 − col. 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 7–2.—CALCULATION OF SECTION 8002 BASE VALUES, SECTION 8002 ESTIMATED ASSESSED VALUES (EAVS), AND AGGREGATE ASSESSED VALUE

| Classification of adjacent parcels (1) | Federal acres allocated for taxable use (table 7–1, col. 6) (2) | Average value/acre of taxable adjacent parcels (3) | Base value of eligible Federal property (col. 3 x col. 4) (4) | Assessment ratio (5) | Section 8002 EAVs and aggregate assessed value (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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