continue to be able to submit their rejection rationale in writing.

It is estimated that 25 percent (or 1,750) of the 7,000 DPAS respondents tasked with notifying their customer of their rationale for rejection are small entities affected by this rule. This estimate is based on data provided by the Department of Defense (DoD)[1] on the number of entities participating in the DPAS program. DoD estimates that one percent (or 7,000) of 700,000 rated orders result in rejection notices and require the related transmittal of the rationale for rejection.

This rule would have a minor positive impact on the small entities affected by this rule. It would save these entities approximately five minutes per response (or 146 hours annually) in reduced public burden. Because the impact to small entities would be small, I certify that this rule would not have a significant economic impact on a substantial number of small entities. This amendment does not include any new reporting or recordkeeping requirements and will not duplicate, overlap or conflict with other laws or regulations.

List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

Accordingly, the DPAS regulations (15 CFR part 700) are proposed to be amended as follows:

PART 700—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and Executive Order 12919, as amended, 59 FR 29525, 3 CFR, 1994 Comp., p. 901, as amended by Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166; section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742, 56 FR 1079, 3 CFR, 1991 Comp., p. 309; and Executive Order 12656, 53 FR 226, 3 CFR, 1988 Comp., p. 585.

2. Revise § 700.13(d)(1) to read as follows:

§ 700.13 Acceptance and rejection of rated orders.

* * * * *

(d) Customer notification requirements. (1) A person must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must also provide the reasons for the rejection, pursuant to paragraphs (b) and (c) of this section, in writing (hard copy) or electronic format.

* * * * *

Dated: November 12, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–25718 Filed 11–19–04; 8:45 am]

BILLING CODE 3510–33–P

[1] Consistent with section 201(b) of Executive Order 12919, the Department of Commerce has delegated authority to DoD to use the DPAS regulations for priority rating of contracts and orders for all materials, services, and facilities needed in support of approved programs with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities. *See* Department of Commerce DPAS Delegation #1 (July 1, 1998). DoD is the single largest user of the DPAS regulations.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–145535–02]

RIN 1545–BB85

Guidance Regarding Predecessors and Successors Under Section 355(e); Limitation on Gain Recognition Under Section 355(e)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that define the terms predecessor and successor for purposes of section 355(e). These proposed regulations provide guidance in determining whether a corporation is a predecessor or successor of a distributing or controlled corporation, as well as rules to assist taxpayers in determining whether an acquisition of an interest in a corporation would cause a distributing corporation to recognize gain under section 355(e). These proposed regulations affect corporations that distribute the stock of controlled corporations in distributions described in section 355.

DATES: Written or electronic comments and requests for a public hearing must be received by February 22, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–145535–02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–145535–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS—REG–145535–02).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Krishna P. Vallabhaneni at (202) 622–7550; concerning submissions of comments or requests for a hearing, Robin R. Jones, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed regulations under section 355(e) of the Internal Revenue Code of 1986. Section 355(e), enacted as part of the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat 788 (1997)), provides that stock of a controlled corporation (Controlled) generally will not be treated as qualified property under section 355(c)(2) or 361(c)(2) if the Controlled stock is distributed as part of a plan (or series of related transactions) pursuant to which one or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation (Distributing) or Controlled. On April 26, 2002, the Internal Revenue Service (IRS) and the Treasury Department published temporary regulations (TD 8988) in the **Federal Register** (67 FR 20632) under section 355(e) providing guidance regarding whether a distribution and an acquisition of Distributing or Controlled are part of a ''plan (or series of related transactions).'' *See* Treas. Reg. § 1.355–7T. Section 355(e)(4)(D) provides that, for purposes of section 355(e), ''any reference to a controlled corporation or a distributing corporation shall include a reference to any predecessor or successor of such corporation.''

Practitioners have commented that guidance regarding the definitions of predecessor and successor is desirable. Therefore, these regulations propose definitions of predecessor and successor, rules for determining whether there has been an acquisition of a predecessor of Distributing, Distributing, or Controlled in certain

cases, and rules limiting the amount of gain required to be recognized as a result of acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing.

Predecessors of Distributing

The definition of a predecessor of Distributing in these proposed regulations is intended to reflect the fact that section 355(e) generally denies tax-free treatment under sections 355(c)(1) and 361(c)(1) if there is a division of a corporation's assets to which section 355(a) applies that is coupled with planned acquisitions of stock representing in the aggregate a 50-percent or greater interest in Distributing or Controlled. The proposed regulations generally provide that a predecessor of Distributing includes a corporation that, before the distribution, transfers property to Distributing in a transaction to which section 381 applies if Distributing transfers some (but not all) of the acquired property to Controlled (or a predecessor of Controlled, as described below) and the basis of such property immediately after the transfer to Controlled (or a predecessor of Controlled) is determined in whole or in part by reference to the basis of the property in the hands of Distributing immediately before the transfer. For example, if before the distribution P merges into D in a statutory merger under section 368(a)(1)(A) and D transfers some but not all of the acquired P assets to C in exchange for C stock in a reorganization under section 368(a)(1)(D), then P is a predecessor of D.

The proposed regulations also provide that a predecessor of Distributing includes a corporation that, before the distribution, transfers property to Distributing in a transaction to which section 381 applies if some but not all of the property transferred to Distributing includes Controlled stock and, after the combining transaction, Distributing transfers less than all of the property acquired (other than the Controlled stock) to Controlled. In such cases, the distribution of Controlled stock, even without a pre-distribution transfer of acquired assets to Controlled, effects a division of the predecessor's assets.

The definition of a predecessor of Distributing may result in a corporation being treated as a predecessor of Distributing even if the distribution and the combination of the predecessor and Distributing are not part of a plan. Once a predecessor of Distributing is identified, it must be determined whether the distribution and any acquisitions (deemed or actual) of stock of the predecessor are part of a plan.

Predecessors of Controlled

In the course of developing these regulations, the IRS and Treasury Department considered to what extent a corporation's transfer of property to Controlled in a transaction to which section 381 applies implicates the policies underlying section 355(e). Generally, Controlled will not be able to transfer property that it receives in such a transaction to Distributing tax-free. One exception is where Controlled itself distributes the stock of another corporation in a distribution to which section 355 applies. In these cases, however, Controlled will functionally be a distributing corporation, and the transferor of property to Controlled may be a predecessor of the distributing corporation. Therefore, as a general matter, it appears that property transferred to Controlled cannot be divided tax-free between Distributing and Controlled in the same way that property transferred to Distributing can be divided tax-free. Accordingly, the policy underlying the definition of a predecessor of Distributing does not appear to necessitate a definition of a predecessor of Controlled.

Nonetheless, solely for purposes of determining whether a corporation is a predecessor of Distributing, calculating certain limitations on gain recognition described below, and applying a special affiliated group rule described below, these proposed regulations define a predecessor of Controlled as a corporation that before the distribution transfers property to Controlled in a transaction to which section 381 applies. Under these proposed regulations, for no other purpose can a corporation be a predecessor of Controlled. Thus, acquisitions of stock that are part of a plan that includes the distribution and that in the aggregate represent a 50-percent or greater interest in a predecessor of Controlled will not cause Distributing to recognize gain. However, the IRS and Treasury Department continue to study whether there may be other situations in which a corporation should be treated as a predecessor of Controlled.

The definition of a predecessor of Controlled ensures that a corporation is treated as a predecessor of Distributing in the following situation and similar ones. Suppose Distributing acquires all the assets of X (including all the outstanding stock of Y) in a transaction to which section 381 applies. After the acquisition, Distributing causes Y to merge into Controlled, a wholly owned subsidiary of Distributing, in a reorganization under section 368(a)(1)(D). Distributing then distributes the stock of Controlled to its shareholders pro rata in a distribution to which section 355(a) applies. In this case, there is a separation of the X assets in a distribution to which section 355(a) applies. Under the definition of a predecessor of Controlled described above, Y will be treated as a predecessor of Controlled, and because Distributing acquires in a transaction to which section 381 applies stock of a predecessor of Controlled from X, X will be treated as a predecessor of Distributing.

Multiple Predecessors

Under the proposed regulations, more than one corporation may be a predecessor of Distributing or Controlled. For example, if more than one corporation transfers property to Distributing in transactions to which section 381 applies, each of the transferring corporations may be a predecessor of Distributing. However, a corporation that transfers its assets in a transaction to which section 381 applies to a predecessor of Distributing is not also treated as a predecessor of Distributing. The IRS and Treasury Department recognize that such transfers of assets to a predecessor of Distributing could be part of the plan that includes the distribution, but are concerned that treating such transferring corporations as predecessors of Distributing would add substantial complexity. Nonetheless, the IRS and Treasury Department continue to consider whether such corporations should be treated as a predecessor of Distributing.

Successors

The definition of a successor of Distributing or Controlled proposed in these regulations is intended to identify corporations that are properly viewed as a continuation of Distributing or Controlled for purposes of section 355(e). Therefore, the proposed regulations define a successor of Distributing as any corporation to which Distributing transfers property after the distribution in a transaction to which section 381 applies and a successor of Controlled as any corporation to which Controlled transfers property after the distribution in a transaction to which section 381 applies. More than one corporation may be a successor of Distributing or Controlled. For example, if after a distribution Distributing transfers property to another corporation (X) in a transaction to which section 381 applies, and X

transfers property to another corporation (Y) in a transaction to which section 381 applies, then each of X and Y may be a successor of Distributing. In this case, the determination of whether Y is a successor of Distributing is made after the determination of whether X is a successor of Distributing.

Special Rules for Measuring Certain Acquisitions

Whether there have been acquisitions of stock that are part of a plan that includes a distribution that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing is counted separately from whether there have been acquisitions of stock that are part of a plan that includes a distribution that in the aggregate represent a 50-percent or greater interest in Distributing. Therefore, Distributing may be required to recognize gain by reason of section 355(e) with respect to a predecessor of Distributing, but not Distributing, and vice versa.

Because a predecessor of Distributing may no longer exist after it combines with Distributing, special rules are necessary to determine whether there has been an acquisition of the predecessor in connection with and after the combination transaction. These proposed regulations provide that each person that owned an interest in Distributing immediately before the transaction in which the predecessor of Distributing transfers its property to Distributing is treated as acquiring stock in the predecessor of Distributing in the combination transaction. For example, suppose D acquires the assets of a predecessor in a statutory merger under section 368(a)(1)(A) and A, an individual, owned stock of D immediately before the merger. A would be treated as acquiring stock of the predecessor.

In addition, an acquisition of Distributing (or a successor of Distributing) that occurs after Distributing's combination with a predecessor will count not only as an acquisition of Distributing, but also as an acquisition of the predecessor. The stock of Distributing (or a successor of Distributing) is treated as the stock of all predecessors of Distributing. Therefore, if D acquires the assets of a predecessor in a statutory merger under section 368(a)(1)(A) and, after the merger, A, an individual, acquires 5 percent of the stock of D, A is treated as acquiring not only stock of D, but also stock of the predecessor of D.

The proposed regulations provide similar rules for determining whether there has been an acquisition of stock of Distributing or Controlled if there is an acquisition of stock of a successor of Distributing or Controlled. Therefore, acquisitions of a successor of Distributing or Controlled and acquisitions of Distributing or Controlled (before or after the distribution) pursuant to a plan are combined to determine whether there have been acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing or Controlled that cause section 355(e) to apply.

Special Rules for Gain Recognition

Generally, if a distribution and acquisitions that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing or Distributing are part of a plan, section 355(e) requires Distributing to recognize the full amount of the gain inherent in the Controlled stock on the date of the distribution under section 355(c)(2) or section 361(c)(2), as applicable. However, if a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing are part of a plan but there are not acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing that are part of that plan, and if the gain inherent in the assets of the predecessor of Distributing that are contributed to Controlled is small relative to the gain inherent in the Controlled stock on the date of the distribution, it may seem inappropriate to require that Distributing recognize the full amount of gain inherent in the Controlled stock. Similarly, if a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing are part of a plan but there are not acquisitions of stock that in the aggregate represent a 50-percent or greater interest in the predecessor of Distributing that are part of a plan, and if the excess of the gain inherent in the Controlled stock on the date of the distribution over the gain attributable to the assets of the predecessor is small relative to the full amount of gain inherent in the Controlled stock, it may seem inappropriate to require that Distributing recognize the full amount of gain inherent in the Controlled stock. Therefore, the proposed regulations provide two rules limiting the amount of gain that Distributing must recognize in these cases.

The first rule provides that if a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing are part of a plan, then the amount of gain that Distributing recognizes by reason of such acquisitions will not exceed the amount of gain, if any, that the predecessor of Distributing would have recognized if, immediately before the distribution, the predecessor had transferred the property that was transferred to Controlled and the stock of Controlled that it transferred to Distributing to a newly formed, wholly owned corporation solely for stock of such corporation in an exchange to which section 351 applied (even if section 351 would not have actually applied) and then sold the stock of that corporation to an unrelated person in exchange for cash equal to its fair market value.

The second rule applies if a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing are part of a plan and the acquisitions occur in the section 381 transaction in which a predecessor of Distributing transfers its assets to Distributing. In these cases, the proposed regulations effectively provide that the amount of gain that Distributing recognizes will not exceed the amount of gain that Distributing would have recognized had it not transferred assets of the predecessor to Controlled and had it not acquired any Controlled stock from the predecessor. In particular, the amount of gain that Distributing recognizes will not exceed the excess, if any, of the amount described in section 355(c)(2) or section 361(c)(2), as applicable, over the amount of gain, if any, that Distributing would have been required to recognize if there had been acquisitions of stock that in the aggregate represent a 50-percent or greater interest in the predecessor of Distributing (but not Distributing) involved in the combining transfer that were part of a plan that includes the distribution, taking into account the limitation in the first rule. For example, assume that X, a corporation, merges into Distributing in a statutory merger that qualifies as a reorganization under section 368(a)(1)(A). In the merger, Distributing issues 75 percent of its stock to the former shareholders of X. Distributing then forms Controlled solely with assets acquired from X in the merger and distributes the stock of Controlled pro rata to its shareholders. At the time of the distribution, the basis of the Controlled stock is $30 and the fair market value of that stock is $70. Assume that the distribution and the former X shareholders' acquisition of

stock of Distributing are part of a plan. Furthermore, assume that, other than the deemed acquisition of stock of X by the pre-merger shareholders of Distributing, there are no other acquisitions of the stock of X that are part of a plan that includes the distribution. By reason of the second limitation, Distributing's gain recognized under section 361(c)(2) would be zero because all of the gain inherent in the Controlled stock at the time of the distribution is attributable to assets acquired from X in the merger.

In order to ensure that in appropriate cases these limitations do not ultimately prevent recognition of gain in the full amount described in section 355(c)(2) or 361(c)(2), as applicable, these proposed regulations provide that if there are acquisitions of stock that in the aggregate represent a 50-percent or greater interest in more than one corporation (for example, two predecessors of Distributing) that are pursuant to a plan that includes the distribution, Distributing must recognize gain in the amount described in section 355(c)(2) or 361(c)(2), as applicable, subject to the limitations described above, with respect to each such corporation. However, because this rule could cause Distributing to recognize a total amount of gain in excess of that amount described in section 355(c)(2) or 361(c)(2), as applicable, these regulations include an overall limitation on gain recognition. That rule provides that the sum of the amounts required to be recognized by Distributing under section 355(e) and the regulations promulgated thereunder will not exceed the amount described in section 355(c)(2) or section 361(c)(2), as applicable.

As described above, the rule for determining whether a corporation is a predecessor of Distributing references the assets of the predecessor at the time it combines with Distributing while the rule for calculating the limitation on gain recognition references the basis and value of the predecessor's assets at the time of the distribution. The IRS and Treasury Department believe that determining whether a corporation is a predecessor of Distributing by reference to its assets at the time it combines with Distributing (and not later) is appropriate because, in that transaction, the predecessor will likely cease to exist. However, the division of the predecessor's assets does not occur until the distribution. In addition, the gain required to be recognized by reason of section 355(e) is measured as of the date of the distribution. Therefore, the IRS and Treasury Department believe that it is appropriate to measure the basis and value of the predecessor's assets on the date of the distribution for purposes of determining the amount of gain required to be recognized when there have been acquisitions of a 50-percent or greater interest in the predecessor that are part of a plan that includes the distribution.

Special Rule for Affiliated Groups

The proposed regulations include a special rule that relates to the application of section 355(e)(2)(C). Section 355(e)(2)(C) provides that a plan (or series of related transactions) will not result in stock or securities in the controlled corporation not being treated as qualified property for purposes of section 355(c)(2) or section 361(c)(2) if, immediately after the completion of such plan or transactions, the distributing corporation and all controlled corporations are members of a single affiliated group (as defined in section 1504 without regard to subsection (b) thereof). These proposed regulations provide that, for purposes of section 355(e)(2)(C), a predecessor of Distributing or Controlled is treated as continuing in existence following its transfer of property to Distributing or Controlled, and Distributing or Controlled is treated as continuing in existence following a transfer of property to a successor.

Request for Comments

The IRS and Treasury Department are concerned that certain transfers of assets to a partnership or a corporation by Distributing or Controlled may facilitate an acquisition of an interest in Distributing's or Controlled's assets that is functionally equivalent to an acquisition of Distributing or Controlled. The IRS and Treasury Department are also concerned that certain acquisitions by persons unrelated to Distributing or Controlled of an interest in a corporation or partnership in which Distributing or Controlled directly or indirectly owns an interest may also be an acquisition that is functionally equivalent to an acquisition of Distributing or Controlled. If such transfers and acquisitions are part of a plan that includes the distribution, they could be used to circumvent the purposes of section 355(e). Accordingly, the IRS and Treasury Department are studying how section 355(e) might apply to such transfers and acquisitions. Comments are requested in this regard.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Krishna P. Vallabhaneni of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.355–8 also issued under 26 U.S.C. 355(e)(5). * * *

Par. 2. Section 1.355–8 is added to read as follows:

§ 1.355–8 Definition of predecessors and successors and limitations on gain recognition.

(a) *References to a distributing or controlled corporation.* For purposes of section 355(e) and the regulations promulgated thereunder, except as otherwise provided, any reference to a distributing corporation (Distributing) or a controlled corporation (Controlled) shall include a reference to any predecessor or successor of such corporation, as such terms are defined in this section.

(b) *Definition of predecessor*—(1) *Predecessor of a distributing corporation.* A predecessor of Distributing is a corporation (the first corporation) that before the distribution transfers property to Distributing in a transaction to which section 381 applies (the combining transfer), but only if either—

(i) Distributing transfers some but not all of the property acquired from the first corporation to Controlled (the separating transfer) and the basis of such property immediately after the separating transfer is determined in whole or in part by reference to the basis of the property in the hands of Distributing immediately before the separating transfer; or

(ii) In the combining transfer, some but not all of the property transferred to Distributing includes Controlled stock and, after the combining transfer, Distributing does not transfer all of the property acquired from the first corporation (other than the Controlled stock) to Controlled.

(2) *Predecessor of a controlled corporation.* Solely for purposes of paragraphs (b)(1), (e)(2), and (f) of this section, a corporation is a predecessor of Controlled if, before the distribution, it transfers property to Controlled in a transaction to which section 381 applies. Other than for the purposes described in the preceding sentence, no corporation can be a predecessor of Controlled.

(3) *References to a distributing or controlled corporation.* For purposes of paragraph (b)(1) of this section, a reference to Distributing shall not include a reference to a predecessor of Distributing. Therefore, a corporation that transfers property to a predecessor of Distributing in a transaction to which section 381 applies is not also a predecessor of Distributing. For purposes of paragraph (b)(2) of this section, a reference to Controlled shall not include a reference to a predecessor of Controlled. Therefore, a corporation that transfers property to a predecessor of Controlled in a transaction to which section 381 applies is not also a predecessor of Controlled.

(4) *Determination of predecessor status*—(i) *Substitute assets.* For purposes of determining whether a corporation is a predecessor of Distributing, if after the combining transfer Distributing transfers any property it received in the combining transfer in a transaction in which gain or loss is not recognized in whole, the property received by Distributing in exchange for such property shall be treated as transferred to Distributing in the combining transfer.

(ii) *Reorganizations under section 368(a)(1)(F).* For purposes of determining whether a corporation is a predecessor of Distributing or Controlled, if a corporation engages in a reorganization under section 368(a)(1)(F), then the resulting corporation shall be treated as the same corporation that engaged in the reorganization. Therefore, if a corporation (X) transfers property to another corporation (Y) in a reorganization under section 368(a)(1)(A), and then Y transfers property to Distributing in a reorganization under section 368(a)(1)(F), Y and Distributing will be treated as the same corporation and X may be a predecessor of Distributing.

(iii) *Multiple predecessors.* More than one corporation may be a predecessor of Distributing or Controlled. Therefore, if more than one corporation transfers property to Distributing or Controlled in transactions to which section 381 applies, each of the transferring corporations may be a predecessor of Distributing or Controlled, respectively.

(c) *Definition of successor*—(1) *In general.* A successor of Distributing or Controlled, respectively, is a corporation to which Distributing or Controlled transfers property after the distribution in a transaction to which section 381 applies (a successor transaction).

(2) *Determination of successor status.* More than one corporation may be a successor of Distributing or Controlled. Therefore, if Distributing transfers property to another corporation (X) in a transaction to which section 381 applies, and X transfers property to another corporation (Y) in a transaction to which section 381 applies, then each of X and Y may be a successor of Distributing. In this case, the determination of whether Y is a successor of Distributing is made after the determination of whether X is a successor of Distributing.

(d) *Special acquisition rules*—(1) *Deemed acquisitions of a predecessor of a distributing corporation.* If there is a predecessor of Distributing, the following rules shall apply.

(i) Each person that owned an interest in Distributing immediately before the combining transfer involving the predecessor of Distributing shall be treated as acquiring in the combining transfer stock representing an interest in the predecessor of Distributing.

(ii) If stock of Distributing is acquired after the combining transfer involving the predecessor of Distributing, the stock of Distributing shall be treated as the stock of the predecessor of Distributing. Therefore, an acquisition of the stock of Distributing that occurs after the combining transfer shall be treated as not only an acquisition of the stock of Distributing, but also an acquisition of the stock of the predecessor of Distributing.

(2) *Deemed acquisitions of a distributing corporation.* If there is a successor of Distributing, the following rules shall apply.

(i) Each person that owned an interest in the successor of Distributing immediately before the successor transaction involving the successor of Distributing shall be treated as acquiring in the successor transaction stock representing an interest in Distributing.

(ii) If stock of the successor of Distributing is acquired after the successor transaction, the stock of the successor of Distributing shall be treated as stock of Distributing. Therefore, acquisitions of the stock of a successor of Distributing that occur after the successor transaction shall be treated as acquisitions of the stock of Distributing.

(3) *Deemed acquisitions of a controlled corporation.* If there is a successor of Controlled, the following rules shall apply.

(i) Each person that owned an interest in the successor of Controlled immediately before the successor transaction involving the successor of Controlled shall be treated as acquiring in the successor transaction stock representing an interest in Controlled.

(ii) If stock of the successor of Controlled is acquired after the successor transaction, the stock of the successor of Controlled shall be treated as stock of Controlled. Therefore, acquisitions of the stock of a successor of Controlled that occur after the successor transaction shall be treated as acquisitions of stock of Controlled.

(4) *Separate counting for distributing corporations and their predecessors.* The measurement of whether one or more persons have acquired stock that in the aggregate represents a 50-percent or greater interest in either a predecessor of Distributing or Distributing that is part of the plan that

includes the distribution shall be made separately. Therefore, there may be acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing that are part of a plan that includes a distribution where there are not acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing that are part of a plan that includes a distribution. In addition, there may be acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing that are part of a plan that includes a distribution where there are not acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing that are part of a plan that includes a distribution.

(e) *Special rules for gain recognition*—(1) *In general.* If there are acquisitions of stock that in the aggregate represent a 50-percent or greater interest in more than one corporation (for example, two predecessors of Distributing) that are pursuant to a plan that includes the distribution, Distributing must recognize gain in the amount described in section 355(c)(2) or 361(c)(2), as applicable, with respect to each such corporation, subject to the limitations in paragraphs (e)(2) and (3) of this section if applicable. The limitations in paragraphs (e)(2) and (3) of this section are applied separately to each such corporation to determine the amount of gain required to be recognized. Paragraph (e)(4) of this section sets forth an overall limitation that is computed taking into account all of the gain recognized by Distributing by reason of section 355(e).

(2) *Acquisition of a predecessor of a distributing corporation*—(i) *In general.* If a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing are part of a plan, the amount of gain recognized by Distributing by reason of section 355(e) as a result of the acquisitions shall not exceed the amount of gain, if any, that the predecessor of Distributing would have recognized if, immediately before the distribution, the predecessor of Distributing had transferred the property that was transferred to Controlled in the separating transfer and stock of Controlled that the predecessor of Distributing transferred to Distributing in the combining transfer to a newly formed, wholly owned corporation in exchange solely for stock of such corporation in an exchange to which section 351 applied and then sold the stock of that corporation to an unrelated person in exchange for cash equal to its fair market value.

(ii) *Operating rules.* For purposes of applying paragraph (e)(2)(i) of this section, the following rules shall apply.

(A) If before the distribution Distributing transfers any property it received from the predecessor of Distributing in the combining transfer in a transaction in which gain or loss is not recognized in whole, the property received by Distributing in exchange for such property shall be treated as transferred to Distributing in the combining transfer.

(B) The basis of the property other than stock of Controlled treated as transferred to the newly formed, wholly owned corporation by the predecessor of Distributing shall equal the basis of such property in the hands of Controlled immediately before the distribution.

(C) Only property (other than stock of Controlled) owned by Controlled at the time of the distribution shall be taken into account in computing the amount pursuant to paragraph (e)(2)(i) of this section. However, if before the distribution Controlled transfers any property it received in the separating transfer in a transaction in which gain or loss is not recognized in whole, the property received by Controlled in exchange for such property shall be treated as transferred to Controlled in the separating transfer.

(D) The basis and fair market value of the stock of Controlled treated as transferred to the newly formed, wholly owned corporation shall equal the basis and fair market value, respectively, of such stock immediately before the combining transfer in which the predecessor of Distributing transferred such stock to Distributing.

(3) *Acquisitions of a distributing corporation.* If a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing are part of a plan and the acquisitions occur in a combining transfer, the amount of gain recognized by Distributing by reason of section 355(e) as a result of the acquisitions shall not exceed the excess, if any, of the amount described in section 355(c)(2) or section 361(c)(2), as applicable, over the amount of gain, if any, that Distributing would have been required to recognize if there had been acquisitions of stock that in the aggregate represent a 50-percent or greater interest in the predecessor of Distributing (but not Distributing) involved in the combining transfer that were part of a plan that includes the distribution, taking into account the limitation in paragraph (e)(2) of this section. For purposes of this paragraph (e)(3), references to Distributing shall not include a reference to a predecessor of Distributing.

(4) *Overall limitation on gain recognition.* The sum of the amounts required to be recognized by Distributing under section 355(e) and the regulations promulgated thereunder (taking into account paragraphs (e)(2) and (3) of this section) shall not exceed the amount described in section 355(c)(2) or section 361(c)(2), as applicable.

(f) *Predecessor or successor as a member of the affiliated group.* For purposes of section 355(e)(2)(C), a predecessor of Distributing shall be treated as continuing in existence following the combining transfer to which section 381 applies described in paragraph (b)(1) of this section, a predecessor of Controlled shall be treated as continuing in existence following the transaction to which section 381 applies described in paragraph (b)(2) of this section, and Distributing or Controlled shall be treated as continuing in existence following a successor transaction.

(g) *Examples.* The following examples illustrate the principles of this section. Unless otherwise stated, assume throughout these examples that Distributing (D) owns all the stock of Controlled (C) and that D distributes the stock of C in a distribution to which section 355 applies, but to which section 355(d) does not apply. In addition, assume that X, Y, and Z are individuals, and that D, C, P, Q, and R are corporations and none of them is a member of a consolidated group. No inference should be drawn from any example concerning whether any requirements of section 355 other than those of section 355(e) are satisfied. The examples are as follows:

Example 1. Predecessor of distributing—(i) *Facts.* X owns 100 percent of the stock of P and Y owns 100 percent of the stock of D. P merges into D in a reorganization under section 368(a)(1)(A). Immediately after the merger, X and Y own 10 percent and 90 percent, respectively, of the stock of D. D then contributes to C one of the assets acquired from P in the merger. At the time of the contribution, the asset has a basis of $40x and a fair market value of $110x. In exchange for the asset, D receives additional C stock and $10x. D distributes the stock of C (but not the cash) to X and Y pro rata. The contribution is described in section 368(a)(1)(D) and D recognizes $10x of gain under section 361(b) in the contribution. Immediately before the distribution, the asset contributed to C has a basis of $50x and a fair market value of $110x, and the stock of C held by D has a basis of $100x and a fair market value of $200x.

(ii) *Analysis.* Under paragraph (b)(1) of this section, P is a predecessor of D because before the distribution P transferred property to D in a transaction to which section 381 applies, D transferred some but not all of the acquired property to C, and immediately after its transfer to C, the property has a basis determined in whole or in part by reference to the basis of the property in the hands of D immediately before the transfer to C.

(iii) Under paragraph (d)(1)(i) of this section, Y is treated as acquiring stock representing 90 percent of the voting power and value of P.

(iv) If the distribution and Y's deemed acquisition of a 90-percent interest in P were part of a plan, D would recognize gain in the amount described in section 361(c)(2). Without regard to the limitations in paragraph (e) of this section, D would be required to recognize $100x of gain. Under paragraph (e)(2) of this section, however, D's gain recognized by reason of the acquisition of P would not exceed $60x, the gain P would have recognized if, immediately before the distribution, it had transferred the former P property transferred by D to C to a newly formed, wholly owned corporation solely for stock of such corporation in an exchange to which section 351 applied and then sold that stock to an unrelated person for cash equal to its fair market value. Therefore, D would recognize $60x of gain.

Example 2. Distributing's predecessor owns controlled stock—(i) *Facts.* X owns 100 percent of the stock of P, and Y owns 100 percent of the stock of D. P owns 35 percent of the stock of C with a basis of $40x and a fair market value of $35x. D owns the remaining 65 percent of the C stock with a basis of $10x and a fair market value of $65x. P merges into D in a reorganization under section 368(a)(1)(A). Immediately after the merger, X and Y own 10 percent and 90 percent, respectively, of the D stock, and D owns 100 percent of the C stock with a basis of $50x and a fair market value of $100x. D then contributes to C one of the assets it acquired from P in the merger in exchange for additional shares of C. The contribution qualifies as a reorganization under section 368(a)(1)(D). After the contribution, D distributes all of the C stock to X and Y pro rata. Immediately before the distribution, the asset contributed to C has a basis of $40x and a fair market value of $100x, and the C stock held by D has a basis of $90x and a fair market value of $200x.

(ii) *Analysis.* Under paragraph (b)(1) of this section, P is a predecessor of D because before the distribution P transferred property to D in a transaction to which section 381 applies, D transferred some but not all of the acquired property to C, and immediately after its transfer to C, the property has a basis determined in whole or in part by reference to the basis of the property in the hands of D immediately before the transfer to C. P is also a predecessor of D under paragraph (b)(1) of this section because some but not all of the property transferred to D includes C stock and, after the merger, D does not transfer all of the property acquired from P to C.

(iii) Under paragraph (d)(1)(i) of this section, Y is treated as acquiring stock representing 90 percent of the voting power and value of P.

(iv) If the distribution and Y's deemed acquisition of a 90-percent interest in P were part of a plan, D would recognize gain in the amount described in section 361(c)(2). Without regard to the limitations in paragraph (e) of this section, D would be required to recognize $110x of gain. Under paragraph (e)(2) of this section, however, D's gain recognized by reason of the acquisition of P would not exceed $55x, the gain P would have recognized if, immediately before the distribution, it had transferred the former P property that was transferred by D to C and the stock of C acquired from P to a newly formed, wholly owned corporation solely for stock of such corporation in an exchange to which section 351 applies and then sold that stock to an unrelated person for cash equal to its fair market value. For this purpose, the basis and fair market value of the C stock is treated as its basis and fair market value, respectively, immediately before the merger. Therefore, D would recognize $55x of gain.

Example 3. Predecessor of controlled—(i) *Facts.* X owns 100 percent of the stock of P and P owns various assets including 100 percent of the stock of R. Y owns 100 percent of the stock of D and D owns 100 percent of the stock of C. P merges into D in a reorganization under section 368(a)(1)(A). Immediately after the merger, X and Y own 10 percent and 90 percent, respectively, of the stock of D. D then causes R to merge into C in a reorganization under section 368(a)(1)(D). At the time of the P–D merger, the R stock has a basis of $40x and a fair market value of $110x. D distributes the stock of C to X and Y pro rata. Immediately before the distribution, the stock of C held by D has a basis of $100x and a fair market value of $200x.

(ii) *Analysis.* Under paragraph (b)(2) of this section, R is a predecessor of C because before the distribution R transferred property to C in a transaction to which section 381 applies. Under paragraph (b)(1) of this section, P is a predecessor of D because some but not all of the property transferred to D includes stock of R, a predecessor of C and, after the merger, D does not transfer all of the property acquired from P to C.

(iii) Under paragraph (d)(1)(i) of this section, Y is treated as acquiring stock representing 90 percent of the voting power and value of P.

(iv) If the distribution and Y's deemed acquisition of a 90-percent interest in P were part of a plan, D would recognize gain in the amount described in section 361(c)(2). Without regard to the limitations in paragraph (e) of this section, D would be required to recognize $100x of gain. Under paragraph (e)(2) of this section, however, D's gain recognized by reason of the acquisition of P would not exceed $70x, the gain P would have recognized if, immediately before the distribution, it had transferred the stock of R to a newly formed, wholly owned corporation solely for stock of such corporation in an exchange to which section 351 applied and then sold that stock to an unrelated person for cash equal to its fair market value. For this purpose, the basis and fair market value of the R stock is treated as its basis and fair market value, respectively, immediately before the P–D merger. Therefore, D would recognize $70x of gain.

Example 4. Acquisition of a distributing corporation. (i) *Facts.* X owns 100 percent of the stock of P and Y owns 100 percent of the stock of D. P merges into D in a reorganization under section 368(a)(1)(A). In the merger, X acquires 60 percent of the D stock. After the merger, therefore, X and Y own 60 percent and 40 percent, respectively, of the stock of D. D then contributes to C, a newly formed corporation, some of the assets acquired from P in the merger and one asset that it owned prior to the merger, in exchange for C stock in a transfer that qualifies as a reorganization under section 368(a)(1)(D). After the contribution, D distributes the C stock to its shareholders pro rata. Immediately before the distribution, the contributed asset that D had owned prior to the merger has a basis of $3x and a fair market value of $10x and the contributed assets acquired from P have an aggregate basis of $1x and an aggregate value of $30x. Finally, immediately before the distribution, D's C stock has a basis of $4x and a fair market value of $40x.

(ii) *Analysis.* Under paragraph (b)(1) of this section, P is a predecessor of D because before the distribution P transferred property to D in a transaction to which section 381 applies, D transferred some but not all of the acquired property to C, and immediately after its transfer to C, the property has a basis determined in whole or in part by reference to the basis of the property in the hands of D immediately before the transfer to C.

(iii) Under paragraph (d)(1)(i) of this section, Y is treated as acquiring stock representing 40 percent of the voting power and value of P. There are not acquisitions that in the aggregate represent a 50-percent or greater interest in P in the merger that is pursuant to a plan that includes a distribution. However, there is an acquisition by X of a 60-percent interest in D in the merger. If that acquisition were pursuant to a plan that includes the distribution, D would be required to recognize gain in the amount described in section 361(c)(2). Without regard to the limitations in paragraph (e) of this section, D would be required to recognize $36x of gain. Under paragraph (e)(3) of this section, however, because that acquisition occurred in connection with P's merger into D, the amount of gain recognized by D would not exceed $7x, the excess of the gain described in section 361(c)(2) ($36x) over the gain that D would have been required to recognize if there had been an acquisition of stock representing a 50-percent or greater interest in P (but not D) that was part of a plan involving the distribution ($29x). Therefore, D would recognize $7x of gain.

Example 5. Successor of a controlled corporation—(i) *Facts.* X owns 100 percent of the stock of each of D and R. D owns 100 percent of the C stock. D's C stock has a basis of $10x and a fair market value of $30x. D distributes all of its C stock to X. Immediately after the distribution, C merges into R in a reorganization under section 368(a)(1)(D). Immediately after the merger, X owns all of

the R stock. Subsequently, Z purchases 60 percent of the stock of R from X.

(ii) *Analysis.* Under paragraph (c) of this section, R is a successor of C because after the distribution C transfers property to R in a transaction to which section 381 applies. Accordingly, Z acquired an interest in a successor of C. In addition, under paragraph (d)(3)(ii) of this section, the stock of R is treated as stock of C such that Z is treated as acquiring 60 percent of the voting power and value of C.

(iii) If the distribution and Z's acquisition of a 60-percent interest in R were part of a plan, D would be required to recognize gain in the amount of $20x, the amount described in section 355(c)(2).

(h) *Effective date.* This section applies to distributions occurring after the date these regulations are published as final regulations in the **Federal Register.**

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–25649 Filed 11–19–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–04–002; FRL–7835–3]

Approval and Promulgation of State Implementation Plans; Oregon

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve numerous revisions to the Oregon State Implementation Plan (SIP) in the State of Oregon Administrative Rules (OAR) relating to the inspection and maintenance (I/M) of motor vehicles. These revisions were submitted to EPA by the Director of the Oregon Department of Environmental Quality (ODEQ) on November 5, 1999, September 15, 2000, November 27, 2000, January 10, 2003, and April 22, 2004.

The revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter CAA or Act).

DATES: Written comments must be received on or before December 22, 2004.

ADDRESSES: Comments may be mailed to: Wayne Elson, Environmental Protection Agency, Office of Air, Waste, and Toxics (OAWT–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101. Comments may also be submitted electronically or through hand delivery/courier. Please follow the detailed instructions in the **ADDRESSES** section of the Direct Final Rule which is located in the Rules section of this **Federal Register**. To submit comments, please follow the detailed instructions described in the Direct Final Rule, **SUPPLEMENTARY INFORMATION** section, Part I, General Information.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following location: EPA, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wayne Elson, Office of Air, Waste, and Toxics (AWT–107), EPA, Seattle, Washington 98101, (206) 553–1463.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: October 26, 2004.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. 04–25628 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2530

[WO–350–1430–PF–24 1A]

RIN 1004–AB10

Indian Allotments

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Bureau of Land Management (BLM) is withdrawing the proposed rule that would have revised the regulations for Indian allotments to reduce the regulatory burden imposed on the public, to streamline and clarify the existing regulations and to remove redundant and unnecessary requirements. The proposal was published in the **Federal Register** on October 16, 1996. We reopened the comment period in the **Federal Register** on July 15, 1999 for 60 days.

FOR FURTHER INFORMATION CONTACT: You may contact Jeff Holdren, Lands and Realty Group, on (202) 452–7779 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, except holidays, to contact Mr. Holdren.

SUPPLEMENTARY INFORMATION: The BLM published the proposed rule in the **Federal Register** on October 16, 1996 (61 FR 53887). We reopened the comment period in the **Federal Register** on July 15, 1999 (64 FR 38172) for 60-days because we inadvertently omitted the information collection requirements. We received three comments. The BLM decided to withdraw the proposed rule and will take no further action on this proposal regarding Indian allotments.

Dated: September 24, 2004.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 04–25766 Filed 11–19–04; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 24, 74, 78, and 90

[WT Docket No. 02–55; FCC 04–253]

The 800 MHz Public Safety Interference Proceeding; Request for Comments on Ex Parte Presentations and Extension of Deadlines

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: Subsequent to release of the *800 MHz Report and Order* in the Public Safety Interference Proceeding on August 6, 2004, Nextel Communications, Inc. and others filed *ex parte* presentations in the rulemaking proceeding. Nextel sought clarification and/or modification of certain aspects of