following reasons. Based on the low boiling point of 1,2-dichloroethane relative to PEPA's, residual 1,2-dichloroethane would be expected to be removed during any purification process of PEPA's. Any residual 1,2-dichloroethane in PEPA's would also be expected to be removed on curing of epoxy resins with PEPA's. In addition, because epoxy resins cured with PEPA's will be allowed only for repeat-use applications, any 1,2-dichloroethane that could be present in food would be minimized by evaporation and washing of the surface before food is added and by the large volume of food in contact with the cured resin over its service lifetime. Based on this information, the agency concludes that the proposed use of the additive is safe, and that the additive will achieve its intended technical effect. Therefore, the agency concludes that the regulations in § 175.300 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4606 (63 FR 45073). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before May 22, 2000, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.300 is amended in paragraph (b)(3)(viii)(*b*) by alphabetically adding an entry to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(viii) * * *

(*b*) * * *

Polyethylenepolyamine (CAS Reg. No. 68131–73–7), for use only in coatings intended for repeated use in contact with food, at temperatures not to exceed 180 °F (82 °C).

* * * * *

Dated: April 14, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–9941 Filed 4–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 8880]

RIN 1545–AU46

Relief From Disqualification for Plans Accepting Rollovers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 401(a)(31) of the Internal Revenue Code. These final regulations provide specific rules that grant relief from disqualification to an eligible retirement plan that inadvertently accepts an invalid rollover contribution. The final regulations also clarify that it is not necessary for a distributing plan to have a favorable IRS determination letter in order for a plan administrator of a receiving plan to reach a reasonable conclusion that a contribution is a valid rollover contribution.

DATES: These regulations are effective on April 21, 2000.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1995, the Treasury Department and the IRS published in the **Federal Register** (60 FR 49199) Final Income Tax Regulations (TD 8619) under sections 401(a)(31) and 402(c). The final regulations provide guidance for complying with the Unemployment Compensation Amendments of 1992 (UCA). A proposed amendment to the regulations (REG–245562–96) under section 401(a)(31) was published in the **Federal Register** (61 FR 49279) on September 19, 1996. The 1996 proposed regulations under sections 401(a)(31) and 402(c) expand and clarify the guidance previously issued in the Final Income Tax Regulations. On December 17, 1998, an amendment to the proposed regulations (REG–245562–96) under section 401(a)(31) was published in the **Federal Register** (63 FR 69584). This amendment to the proposed regulations was issued in response to the congressional directive in section 1509 of Taxpayer Relief Act of 1997 (TRA '97), which directs the IRS to issue guidance clarifying that it is not necessary for a distributing plan to have a favorable IRS determination letter in order for a plan administrator of a

receiving plan to reasonably conclude that a contribution is a valid rollover contribution. Written comments responding to the 1996 proposed regulations were received. There were no written comments responding to the 1998 amendment to the proposed regulations. No public hearing was requested or held. After consideration of the comments, the amended proposed regulations under section 401(a)(31) are adopted by this Treasury decision.

Explanation of Provisions and Summary of Comments

A. Relief From Disqualification

The final regulations under section 401(a)(31) of the Internal Revenue Code provide that an eligible retirement plan which accepts a direct rollover from another plan will not fail to satisfy section 401(a) or 403(a) merely because the plan making the distribution is, in fact, not qualified under section 401(a) or 403(a) at the time of the distribution if, prior to accepting the rollover, the plan administrator of the receiving plan reasonably concluded that the distributing plan was qualified under section 401(a) or 403(a).

The proposed regulations clarify and expand upon this relief. Under the proposed regulations, an eligible retirement plan that accepts an invalid rollover contribution, whether as a direct rollover or as a rollover contribution other than a direct rollover, will be treated, for purposes of section 401(a) or 403(a), as accepting a valid rollover contribution, if the plan administrator of the receiving plan satisfies two conditions. First, when accepting the rollover contribution, the plan administrator of the receiving plan must reasonably conclude that the rollover contribution is a valid rollover contribution. Second, if the plan administrator of the receiving plan later determines that the rollover contribution was an invalid rollover contribution, the plan must distribute the amount of the invalid rollover contribution, plus earnings attributable thereto, to the employee within a reasonable period of time.

B. Documentation Offered as Evidence To Support a Reasonable Conclusion

The 1996 proposed regulations do not mandate any particular documentation or procedures that a plan administrator must use in order to reach a reasonable conclusion that a rollover contribution is a valid rollover contribution. The 1996 proposed regulations contain a series of examples to illustrate the types of documentation and procedures that would be sufficient to support a reasonable conclusion. In each example, the employee making the rollover contribution provides the plan administrator of the receiving plan with a letter from the plan administrator of the distributing plan stating that the distributing plan has received an IRS determination letter indicating that the distributing plan is qualified under section 401(a).

Several commentators stated that the examples in the 1996 proposed regulations appear to imply that the acknowledgment of the receipt of a favorable IRS determination letter by a distributing plan is a prerequisite to a plan administrator of a receiving plan reaching a reasonable conclusion that a rollover contribution is a valid rollover contribution. Commentators argued that the public policy goal of pension portability would be impeded if an eligible retirement plan is subject to complex administrative procedures when accepting rollover contributions. These concerns were addressed in the 1998 amendment to the proposed regulations implementing the congressional directive in section 1509 of TRA '97. That amendment clarifies that it is not necessary for a distributing plan to have a favorable IRS determination letter in order for a plan administrator of a receiving plan to reach a reasonable conclusion that a contribution is a valid rollover contribution. In addition, an example was added to the proposed regulations in which an employee does not provide a statement from the distributing plan administrator that the distributing plan has received a favorable IRS determination letter, but instead the employee provides a statement from the distributing plan administrator relating to the qualification of the distributing plan. In the preamble to the 1998 amendment to the proposed regulations, it is stressed that none of the examples in the proposed regulations are intended to describe the only types of information that a plan administrator can find to be sufficient and the examples are not intended to preclude reliance on other types of information, such as opinions or statements regarding the plan's qualification provided by appropriate professionals with expertise in plan qualification requirements.

C. Miscellaneous Comments

One commentator stated that both Examples 1 and 3 in the proposed regulations, which provide that Employee A will not have attained age 70½ by the end of the year in which the rollover contribution will occur, imply that if an employee were age 70½ or older, a rollover option would be unavailable. This implication was not intended. The fact was included merely to illustrate the more common scenario of an employee who is under age 70½ and rolls over a retirement plan distribution.

Some commentators proposed that guidance is needed regarding the procedures for correcting invalid rollover contributions. One commentator suggested that relief, similar to that provided to plans receiving invalid rollover contributions, should also be afforded to plans receiving assets and liability transfers in the event that a transferor's plan does not satisfy the qualification requirements under the Code. These comments will be taken into account in developing future guidance priorities.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has 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. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Pamela R. Kinard, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Section 1.401(a)(31)–1 is amended as follows:

1. Under the heading ''List of Questions,'' redesignating Q–14 through Q–18 as Q–15 through Q–19, respectively, and adding new Q–14.

2. Under the heading ''Questions and Answers,'' removing the paragraph designation (a) and the paragraph heading, and removing paragraph (b) from A–13.

3. Under the heading ''Questions and Answers,'' redesignating Q&A–14 through Q&A–18 as Q&A–15 through Q&A–19, respectively, and adding new Q&A–14.

4. Under the heading ''Questions and Answers,'' removing the language ''Q&A–15'' in the fourth sentence of the newly designated A–16 and adding ''Q&A–16'' in its place.

5. Under the heading ''Questions and Answers,'' removing the language ''Q&A–17'' in the first sentence of the newly designated A–18 and adding ''Q&A–18'' in its place.

The additions read as follows:

§ 1.401(a)(31)–1 Requirement to offer direct rollover of eligible rollover distributions; questions and answers.

* * * * *

List of Questions

* * * * *

Q–14. If a plan accepts an invalid rollover contribution, whether or not as a direct rollover, how will the contribution be treated for purposes of applying the qualification requirements of section 401(a) or 403(a) to the plan?

* * * * *

Questions and Answers

* * * * *

Q–14. If a plan accepts an invalid rollover contribution, whether or not as a direct rollover, how will the contribution be treated for purposes of applying the qualification requirements of section 401(a) or 403(a) to the plan?

A–14. (a) *Acceptance of invalid rollover contribution.* If a plan accepts an invalid rollover contribution, the contribution will be treated, for purposes of applying the qualification requirements of section 401(a) or 403(a) to the receiving plan, as if it were a valid rollover contribution, if the following two conditions are satisfied. First, when accepting the amount from the employee as a rollover contribution, the plan administrator of the receiving plan reasonably concludes that the contribution is a valid rollover contribution. While evidence that the distributing plan is the subject of a determination letter from the Commissioner indicating that the distributing plan is qualified would be useful to the receiving plan administrator in reasonably concluding that the contribution is a valid rollover contribution, it is not necessary for the distributing plan to have such a determination letter in order for the receiving plan administrator to reach that conclusion. Second, if the plan administrator of the receiving plan later determines that the contribution was an invalid rollover contribution, the amount of the invalid rollover contribution, plus any earnings attributable thereto, is distributed to the employee within a reasonable time after such determination.

(b) *Definitions.* For purposes of this Q&A–14:

(1) An *invalid rollover contribution* is an amount that is accepted by a plan as a rollover within the meaning of § 1.402(c)–2, Q&A–1 (or as a rollover contribution within the meaning of section 408(d)(3)(A)(ii)) but that is not an eligible rollover distribution from a qualified plan (or an amount described in section 408(d)(3)(A)(ii)) or that does not satisfy the other requirements of section 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover or a rollover contribution.

(2) A *valid rollover contribution* is a contribution that is accepted by a plan as a rollover within the meaning of § 1.402(c)–2, Q&A–1 or as a rollover contribution within the meaning of section 408(d)(3) and that satisfies the requirements of section 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover or a rollover contribution.

(c) *Examples.* The provisions of paragraph (a) of this Q&A–14 are illustrated by the following examples:

Example 1. (i) Employer X maintains for its employees Plan M, a profit sharing plan qualified under section 401(a). Plan M provides that any employee of Employer X may make a rollover contribution to Plan M. Employee A is an employee of Employer X, will not have attained age 70½ by the end of the year, and has a vested account balance in Plan O (a plan maintained by Employee A's prior employer). Employee A elects a single sum distribution from Plan O and elects that it be paid to Plan M in a direct rollover.

(ii) Employee A provides the plan administrator of Plan M with a letter from the plan administrator of Plan O stating that Plan O has received a determination letter from the Commissioner indicating that Plan O is qualified.

(iii) Based upon such a letter, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the amount paid as a direct rollover is an eligible rollover distribution.

Example 2. (i) The facts are the same as *Example 1,* except that, instead of the letter provided in paragraph (ii) of *Example 1,* Employee A provides the plan administrator of Plan M with a letter from the plan administrator of Plan O representing that Plan O satisfies the requirements of section 401(a) (or representing that Plan O is intended to satisfy the requirements of section 401(a) and that the administrator of Plan O is not aware of any Plan O provision or operation that would result in the disqualification of Plan O).

(ii) Based upon such a letter, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the amount paid as a direct rollover is an eligible rollover distribution.

Example 3. (i) Same facts as *Example 1,* except that Employee A elects to receive the distribution from Plan O and wishes to make a rollover contribution described in section 402 rather than a direct rollover.

(ii) When making the rollover contribution, Employee A certifies that, to the best of Employee A's knowledge, Employee A is entitled to the distribution as an employee and not as a beneficiary, the distribution from Plan O to be contributed to Plan M is not one of a series of periodic payments, the distribution from Plan O was received by Employee A not more than 60 days before the date of the rollover contribution, and the entire amount of the rollover contribution would be includible in gross income if it were not being rolled over.

(iii) As support for these certifications, Employee A provides the plan administrator of Plan M with two statements from Plan O. The first is a letter from the plan administrator of Plan O, as described in *Example 1,* stating that Plan O has received a determination letter from the Commissioner indicating that Plan O is qualified. The second is the distribution statement that accompanied the distribution check. The distribution statement indicates that the distribution is being made by Plan O to Employee A, indicates the gross amount of the distribution, and indicates the amount withheld as Federal income tax. The amount withheld as Federal income tax is 20 percent of the gross amount of the distribution. Employee A contributes to Plan M an amount not greater than the gross amount of the distribution stated in the letter from Plan O and the contribution is made within 60 days of the date of the distribution statement from Plan O.

(iv) Based on the certifications and documentation provided by Employee A, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the distribution otherwise satisfies the requirements of section 402(c) for treatment as a rollover contribution.

Example 4. (i) The facts are the same as in *Example 3,* except that, rather than contributing the distribution from Plan O to Plan M, Employee A contributes the distribution from Plan O to IRA P, an individual retirement account described in

section 408(a). After the contribution of the distribution from Plan O to IRA P, but before the year in which Employee A attains age 70½, Employee A requests a distribution from IRA P and decides to contribute it to Plan M as a rollover contribution. To make the rollover contribution, Employee A endorses the check received from IRA P as payable to Plan M.

(ii) In addition to providing the certifications described in *Example 3* with respect to the distribution from Plan O, Employee A certifies that, to the best of Employee A's knowledge, the contribution to IRA P was not made more than 60 days after the date Employee A received the distribution from Plan O, no amount other than the distribution from Plan O has been contributed to IRA P, and the distribution from IRA P was received not more than 60 days earlier than the rollover contribution to Plan M.

(iii) As support for these certifications, in addition to the two statements from Plan O described in *Example 3,* Employee A provides copies of statements from IRA P. The statements indicate that the account is identified as an IRA, the account was established within 60 days of the date of the letter from Plan O informing Employee A that an amount had been distributed, and the opening balance in the IRA does not exceed the amount of the distribution described in the letter from Plan O. There is no indication in the statements that any additional contributions have been made to IRA P since the account was opened. The date on the check from IRA P is less than 60 days before the date that Employee A makes the contribution to Plan M.

(iv) Based on the certifications and documentation provided by Employee A, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the contribution by Employee A is a rollover contribution described in section 408(d)(3)(A)(ii) that satisfies the other requirements of section 408(d)(3) for treatment as a rollover contribution.

* * * * *

Par. 3. Section 1.402(c)–2 is amended as follows:

1. Section 1.402(c)–2 is amended by adding a sentence to the end of A–11.

2. Under the heading ''List of Questions,'' removing the language ''§ 1.401(a)(31)–1, Q&A–17'' in Q–15 and adding ''§ 1.401(a)(31)–1, Q&A–18'' in its place.

3. Under the heading ''Questions and Answers,'' removing the language ''§ 1.401(a)(31)–1, Q&A–15'' in the third sentence of A–9(a) and adding ''§ 1.401(a)(31)–1, Q&A–16'' in its place.

4. Under the heading ''Questions and Answers,'' removing the language ''§ 1.401(a)(31)–1, Q&A–15'' in the introductory text of A–9(c) and adding ''§ 1.401(a)(31)–1, Q&A–16'' in its place.

5. Under the heading ''Questions and Answers,'' removing the language ''§ 1.401(a)(31)–1, Q&A–15'' in the last sentence of *Example 1*(b) of A–9(c) and adding ''§ 1.401(a)(31)–1, Q&A–16'' in its place.

6. Under the heading ''Questions and Answers,'' removing the language ''§ 1.401(a)(31)–1, Q&A–16'' in the last sentence of A–10(b) and adding ''§ 1.401(a)(31)–1, Q&A–17'' in its place.

7. Under the heading ''Questions and Answers,'' removing the language ''§ 1.401(a)(31)–1, Q&A–17'' in the last sentence of A–14 and adding ''§ 1.401(a)(31)–1, Q&A–18'' in its place.

8. Under the heading ''Questions and Answers,'' removing the language ''§ 1.401(a)(31)–1, Q&A–17'' in Q–15 and adding ''§ 1.401(a)(31)–1, Q&A–18'' in its place.

9. Under the heading ''Questions and Answers,'' removing the language ''§ 1.401(a)(31)–1, Q&A–17'' in the third sentence of A–15 and adding ''§ 1.401(a)(31)–1, Q&A–18'' in its place.

The addition reads as follows:

§ 1.402(c)–2 Eligible rollover distributions; questions and answers.

* * * * *

A–11. * * * See § 1.401(a)(31)–1, Q&A–14, for guidance concerning the qualification of a plan that accepts a rollover contribution.

* * * * *

§ 1.403(b)–2 [Amended]

Par. 4. Section 1.403(b)–2 is amended as follows:

1. Under the heading ''Questions and Answers,'' removing the language ''§ 1.401(a)(31)–1, Q&A–14'' in the next to last sentence of A–2(a) and adding ''§ 1.401(a)(31)–1, Q&A–15'' in its place.

2. Under the heading ''Questions and Answers,'' removing the language ''§ 1.401(a)(31)–1, Q&A–18'' in the second sentence of A–4(a)(1) and adding ''§ 1.401(a)(31)–1, Q&A–19'' in its place.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 5. The authority citation for part 31 continues to read in part as follows:

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

§ 31.3405(c)–1 [Amended]

Par. 6. Section 31.3405(c)–1 is amended as follows:

1. Under the heading ''Questions and Answers,'' removing the language ''Q&A–17 of § 1.401(a)(31)–1'' in the next to last sentence of A–10(a) and adding ''Section 1.401(a)(31)–1, Q&A–18'' in its place.

2. Under the heading ''Questions and Answers,'' removing the language ''§ 1.401(a)(31)–1, Q&A–16'' in the third sentence of A–13 and adding ''§ 1.401(a)(31)–1, Q&A–17'' in its place.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: April 6, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 00–9815 Filed 4–20–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA084/101–5045a; FRL–6562–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised Format for Materials Being Incorporated by Reference; Approval of Recodification of the Virginia Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Virginia State Implementation Plan submitted on January 13, 1998 and June 7, 1999 by the Virginia Department of Environmental Quality. These submittals include a recodification of and associated administrative revisions to Virginia's air pollution control regulations. This recodification reorganizes and renumbers the Virginia SIP to match the numbering system set forth in the Virginia Administrative Code. EPA is also revising the format of regulations for materials submitted by Virginia that are incorporated by reference (IBR) into their respective State implementation plans (SIPs). These provisions include both rules and source-specific requirements which EPA has approved as part of the Virginia SIP.

DATES: This rule is effective on June 20, 2000 without further notice, unless EPA receives adverse written comment by May 22, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Marcia L. Spink, Associate Director, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division,