

ventive or protective; § 13.205 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Noel C. Genevay, Jr., trading as Contact Lens Specialists, New Orleans, La., Docket 7957, September 28, 1960]

*In the Matter of Noel C. Genevay, Jr., an Individual, Trading Under the Name of Contact Lens Specialists*

Consent order requiring a retail seller of "Air Comfort" contact lenses in New Orleans, La., to cease advertising falsely in newspapers, circulars, etc., that all persons could successfully wear his said contact lenses, and with complete comfort; that the lenses were unbreakable, protected the entire eye, and would correct all defects in vision including all cases requiring bifocals.

The order to cease and desist is as follows:

*It is ordered.* That the Respondent, Noel C. Genevay, Jr., trading under the name of Contact Lens Specialists, or any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of contact lenses, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that:

- (a) All persons can successfully wear his contact lenses;
- (b) His contact lenses will correct all defects of vision;
- (c) There is no discomfort in wearing his contact lenses;
- (d) All persons can wear Respondent's contact lenses all day without discomfort; or that any person can wear said contact lenses all day without discomfort except after that person has become fully adjusted thereto;

(e) Said contact lenses are an adequate substitute for bi-focal eyeglasses for all persons;

(f) Said contact lenses protect the eye unless limited to the small portion of the eye that is covered thereby;

(g) Said contact lenses are unbreakable;

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 above.

By "Decision of the Commission", etc., report of compliance was required as follows:

*It is ordered.* That respondent Noel C. Genevay, Jr., an individual, trading under the name of Contact Lens Specialists, shall, within sixty (60) days after service upon him of this order, file with

the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: September 28, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, Secretary.

[F.R. Doc. 60-11031; Filed, Nov. 28, 1960; 8:47 a.m.]

## Title 17—COMMODITY AND SECURITIES EXCHANGES

### Chapter II—Securities and Exchange Commission

[Release No. 4298]

#### PART 231—INTERPRETATIVE RELEASES RELATING TO SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

[Release No. 6419]

#### PART 241—INTERPRETATIVE RELEASES RELATING TO SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

[Release No. 3140]

#### PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

#### § 231.4298 Statement of the Commission as to the applicability of the Federal securities laws to real estate investment trusts.

*Real estate investment trust.* The Securities and Exchange Commission has received a number of inquiries as to the applicability of the Federal securities laws to real estate investment trusts as defined in a recent amendment to the Internal Revenue Code (Public Law 86-779, September 14, 1960). This amendment provides substantially the same tax treatment for qualified trusts which are substantially limited to investments in real estate and real estate mortgages as is provided for "regulated investment companies", but it does not amend any of the statutes administered by this Commission. A real estate investment trust may be subject to the provisions of the Federal securities laws, depending upon the circumstances involved in offering its securities for sale, the nature of such securities, and the character of the trust's investments.

The amendment, among other things, requires that, in order to qualify for the special tax treatment provided, the trust's securities must be beneficially owned by 100 or more persons. In view of the number of beneficial owners required, it appears unlikely that the scope of the offering could be so limited as to make available the exemption provided in the second clause of section 4(1) of the Securities Act of 1933 for transactions

by an issuer not involving a public offering. Thus, consideration should be given to section 5 of that Act which requires that, unless an exemption is available, a registration statement must be filed before a public offering of securities may be made by any means of transportation or communication in interstate commerce or by use of the mails and that such statement must become effective before any sales may be made by such jurisdictional means. Whether any of the exemptions from section 5 contained in sections 3 and 4 would be available would depend on the facts and circumstances of each case. In this regard it should be noted that the exemption from the registration of securities under the Securities Act of 1933 provided by section 3(a)(11) of that Act for certain intrastate offerings is not available to an investment company registered or required to be registered under the Investment Company Act of 1940.

A real estate investment trust, depending upon the nature of its investment portfolio and the nature of the securities it issues, may come within the definition of an investment company as contained in section 3(a) of the Investment Company Act of 1940, in which event, absent an available exemption or exception, registration of the trust under that Act would be required. One exception from the requirements of the Act which may be applicable to a real estate investment trust is that contained in section 3(c)(6)(C) of the 1940 Act for a company primarily engaged in the business of "purchasing or otherwise acquiring mortgages and other liens on and interests in real estate" and not "engaged in the business of issuing face-amount certificates of the installment type or periodic payment plan certificates."

Thus, in determining the applicability of the exception contained in section 3(c)(6)(C), the character of the trust's assets must be considered. In this respect, no question would be raised where a real estate investment trust invested exclusively in fee interests in real estate or mortgages or liens secured by real estate. A trust, however, which also invested to a substantial extent in other real estate investment trusts (as is permitted by the amendment) or in companies engaged in the real estate business or in other securities might not qualify for this exception. Questions in this respect can be determined only on the basis of a consideration of the facts and circumstances in each case.

The other question to be considered in determining the availability of the section 3(c)(6)(C) exemption is the nature of the securities issued by the trust. A face-amount certificate of the installment type is defined in the Investment Company Act of 1940 as "any certificate, investment contract, or other security which represents an obligation on the part of its issuer to pay a stated sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount \* \* \*". A periodic payment plan certificate is defined as "(A) any

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certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments; and (B) any security the issuer of which is also issuing securities of the character described in Clause (A) and the holder of which has substantially the same rights and privileges as those which the holder of securities of the character described in Clause (A) have upon completing the periodic payments for which such securities provide."

Consideration should also be given to whether the broker-dealer registration and other regulatory provisions of the Securities Exchange Act of 1934 are applicable to the real estate investment trust and those who sell its securities.

Copies of the amendment to the Internal Revenue Code may be obtained for ten cents from the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C.

NOTE: The text of §§ 241.6410 and 271.3140 are identical with that appearing in § 231.4298.

By the Commission.

[SEAL] **NELLYE A. THORSEN,**  
*Assistant Secretary.*

NOVEMBER 18, 1960.

[F.R. Doc. 60-11035; Filed, Nov. 28, 1960; 8:48 a.m.]

**Title 21—FOOD AND DRUGS**

**Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare**

**PART 121—FOOD ADDITIVES**

**Subpart A—Definitions and Procedural and Interpretative Regulations**

**EXTENSION OF EFFECTIVE DATE OF STATUTE FOR CERTAIN SPECIFIED FOOD ADDITIVES**

The Commissioner of Food and Drugs, pursuant to the authority provided in the Federal Food, Drug, and Cosmetic Act (sec. 6(c), Public Law 85-929; 72 Stat. 1788; 21 U.S.C., note under sec. 342) and delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625), hereby authorizes the use in foods of certain additives for which tolerances have not yet been established or petitions therefor denied.

1. Section 121.86 is amended by adding thereto the following items:

§ 121.86 Extension of effective date of statute for certain specified food additives as direct additives to food.

On the basis of data supplied in accordance with § 121.85 and findings that no undue risk to the public health is involved and that conditions exist that make necessary the prescribing of an additional period of time for obtaining tolerances or denials of tolerances or for granting exemptions from tolerances, the following additives may be used in food, under certain specified conditions,

for a period of 1 year from March 6, 1960, or until regulations shall have been issued establishing or denying tolerances

or exemptions from the requirement of tolerances, in accordance with section 409 of the act, whichever occurs first:

Product	Limits	Specified uses or restrictions
Dimethylpolysiloxane.....	.....	As a constituent of defoamers used in spray adjuvants on fruits and vegetables.
Disodium ethylenediamine tetraacetate.....	15 parts per part of vitamin B <sub>12</sub> .	As an aid in stabilizing vitamin B <sub>12</sub> in aqueous multivitamin solutions.
Kerosene, deodorized.....	1.0 part per million residual.	As a constituent of spray adjuvants used on fruits and vegetables.
Nonylphenoxy polyethyleneoxy ethanol (9.5 mols ethylene oxide).....	.....do.....	As a constituent of spray adjuvants used on fruits and vegetables.
Petroleum sulfonate (containing 50 percent mineral oil and 50 percent sulfonated petroleum oil of molecular weight 302).....	.....do.....	
Polyglyceryl phthalate ester of coconut oil fatty acids diluted with ethylene dichloride.....	.....do.....	As a spray adjuvant on fruits and vegetables.
1,1,1-Trichloroethane.....	.....	As a constituent of defoamers used in spray adjuvants on fruits and vegetables.

2. Section 121.87 is amended by adding to paragraph (a) the following items:

§ 121.87 Extension of effective date of statute for certain specified food additives as indirect additives to food.

(a) On the basis of data supplied in accordance with § 121.87 and findings that no undue risk to the public health is involved and that conditions exist that make necessary the prescribing of

an additional period of time for obtaining tolerances or denials of tolerances or for granting exemptions from tolerances, the following additives may be used in connection with the production, packaging and storage of food products, under certain specified conditions for a period of 1 year from March 6, 1960, or until regulations shall have been issued in accordance with section 409 of the act, whichever occurs first:

Product	Limits	Specified uses or restrictions
Ethylenediamine tetracetate acid, tetrasodium salt of.....	.....	In felt-cleaning compound used in the manufacture of paper and paperboard products.
Ethylene glycol monobutyl ether.....	.....	
Polyamide resin obtained by condensation of dimethyl vegetable fatty acids and ethylene diamine, molecular weight 6000-9000.....	.....	As a component of food-packaging material.
Polyoxyethylated nonylphenol (9-10 mols ethylene oxide).....	.....	Manufacture of paper and paperboard.
Polyoxyethylene-polyoxypropylene glycol block polymer, molecular weight 2000.....	.....	In felt-cleaning compound used in the manufacture of paper and paperboard.
Sodium dodecylbenzene sulfonate.....	.....	
Sodium salt of naphthalene sulfonic acid condensed with formaldehyde.....	.....	

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since extensions of time, under certain conditions, for the effective date of the food additives amendment to the Federal Food, Drug, and Cosmetic Act were contemplated by the statute as a relief of restrictions on the food-processing industry.

*Effective date.* This order shall become effective as of the date of signature. (72 Stat. 1788; 21 U.S.C., note under sec. 342)

Dated: November 21, 1960.

[SEAL] **JOHN L. HARVEY,**  
*Deputy Commissioner of Food and Drugs.*

[F.R. Doc. 60-11041; Filed, Nov. 28, 1960; 8:49 a.m.]

**PART 121—FOOD ADDITIVES**

**Subpart D—Food Additives Permitted in Food for Human Consumption**

**POLYSORBATE 80 (POLYOXYETHYLENE (20) SORBITAN MONOOLEATE)**

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Nopco Chemical Company, 60 Park Place, Newark, New Jersey, and other relevant material, has

concluded that the following amendment to the food additive regulations should issue in conformance with section 409 of the Federal Food, Drug, and Cosmetic Act, with respect to the food additive polysorbate 80 (polyoxyethylene (20) sorbitan monooleate) in frozen desserts as an emulsifier, and as a component of yeast defoamer. Therefore, pursuant to the provisions of the act (sec. 409(c) (1), 72 Stat. 1786; 21 U.S.C. 348(c) (1)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625): *It is ordered,* That § 121.1009 of Subpart D be amended as set forth below:

In § 121.1009, the introduction to the section, the section headnote, and paragraphs (c) and (d) are changed to read: § 121.1009 Polysorbate 80 (polyoxyethylene (20) sorbitan monooleate).

The food additive polysorbate 80 (polyoxyethylene (20) sorbitan monooleate), which is a mixture of polyoxyethylene ethers of mixed partial oleic acid esters of sorbitol anhydrides and related compounds, may be safely used in or on food in accordance with the following prescribed conditions:

(c) The additive is used or intended for use as follows: