from the public under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. Existing information collection requirements in 7 CFR Part 59 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and assigned OMB Control Number 0581-0113.

List of Subjects in 7 CFR Part 59

Shell eggs, Egg products, Mandatory inspection service.

For reasons set out in the preamble and under authority contained in the EPIA (21 U.S.C. 1031-1056), Title 7, Part 59 of the Code of Federal Regulations is amended as set forth below:

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

1. The authority citation of Part 59 continues to read as follows:

Authority: Secs. 2-28 of the Egg Products Inspection Act (84 Stat. 1620-1635; 21 U.S.C. 1031-1056).

§ 59.910 [Amended]

2. Paragraph (b) of § 59.910 (7 CFR 59.910(b)) is amended by adding alphabetically the following country to the list of countries from which egg products are eligible to be imported into the United States: The Netherlands.

Done at Washington, DC, on: October 29, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-25493 Filed 11-4-87; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-16094; File No. S7-20-87]

Distribution of Long-Term Capital Gains by Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendment.

SUMMARY: The Commission has amended an existing rule to allow registered investment companies to make an additional distribution of long-term capital gains for the purpose of not incurring a special excise tax. The amendment was adopted because of the effect of tax law changes on certain registered investment companies. The amendment eliminates the need for those companies to obtain exemptive orders to make the desired distributions. The Commission has also adopted technical changes to clarify certain references in the existing rule.

EFFECTIVE DATE: November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Chief, (202) 272-2048, Office of Regulatory Policy, or Lawrence A. Friend, Chief Accountant, (202) 272-2106, Office of Disclosure Review, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today has amended rule 19b-1 (17 CFR 270.19b-1) under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a-1 et seq.). The rule generally prohibits a registered investment company from distributing long-term capital gains more frequently than once with respect to any taxable year. The amendment, which the Commission proposed on June 5, 1987 (Investment Company Act Release No. 15771) ("Proposing Release"),[1] allows certain investment companies to make one additional distribution of long-term capital gains for each taxable year, if needed to avoid assessment of an excise tax. At the same time, the Commission has also adopted its proposed technical changes to clarify certain references in the rule.

The background and reasons for the amendment are summarized in this release. The Proposing Release contains a more detailed discussion.

Background

Section 19(b) (15 U.S.C. 80a-19(b)) was adopted as part of the 1970 amendments to the Act.[2] The section prohibits registered investment companies from distributing, in contravention of such rules, regulations or orders as the Commission may prescribe, long-term capital gains more often than once every twelve months.[3] Rule 19b-1 implements section 19(b).[4] The rule prohibits, with minor exceptions, investment companies from distributing more than one long-term capital gains dividend with respect to any taxable year.[5]

Under tax law changes effected by the Tax Reform Act of 1986,[6] the Internal Revenue Code ("Code") (26 U.S.C. 1 *et seq.*) imposes for each calendar year a 4% nondeductible excise tax ("Excise Tax") on any regulated investment company ("RIC") that does not distribute by December 31 to its shareholders at least 90% of its net aggregate short- and long-term capital gains ("Required Distribution") realized for the twelve-month period ended on October 31 of that year.[7] Thus, the Excise Tax, in effect, requires a RIC to make a long-term capital gains distribution by the close of the calendar year.

Since many RICs would also need to make a distribution at the end of their taxable year to receive the favorable tax treatment afforded by Subchapter M of the Code, distributions made to satisfy the Required Distribution could lead to violations of section 19(b) and rule 19b-1.[8] These RICs would need to make two

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[1] 52 FR 22496 (June 12, 1987).

[2] Investment Company Amendments Act of 1970, Pub. L. 91-547, 11, 84 Stat. 1413, 1422 (1970).

[3] Section 19(b) of the Act provides that:

It shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered investment company to distribute long-term capital gains, as defined in the [Internal Revenue Code], more often than once every twelve months.

[4] Investment Company Act Rel. No. 6834 (Nov. 23, 1971) (36 FR 232 (Dec. 2, 1971)).

[5] Paragraph (a) of rule 19b-1 allows a regulated investment company to make a supplemental distribution of up to 10% of the prior distribution. (A regulated investment company, as is relevant here, is any management company registered under the Act, and which, among other things, derives at least 90% of its gross income from securities or currency-related holdings or transactions. I.R.C. section 851.) Further, under paragraph (e) of the rule, an investment company may make a special distribution otherwise prohibited by the rule in the event of "unforeseen circumstances," if it first files a request with the Commission to do so, and the Commission does not deny such request within 15 days after receipt thereof.

[6] Pub. L. 99-514, section 651, 100 Stat. 2294-2297 (1986).

[7] I.R.C. section 4982. A RIC may also be subject to the Excise Tax if it did not make certain other distributions; *e.g.*, the term "required distribution" under the Code includes 97% of a RIC's ordinary income for the calendar year. I.R.C. section 4982(b). The Excise Tax is imposed on the excess of the "required distribution for such calendar year" over the "distributed amount for such calendar year." I.R.C. section 4982(a). "Distributed amount" includes, generally, the dividends paid during the calendar year plus amounts upon which corporate income tax is imposed during such calendar year. I.R.C. section 4982(c).

[8] Under Subchapter M, long-term capital gains earned by a RIC during its taxable year and distributed to investors would not be subject to a corporate tax; however, they would be taxable income to the investor for the year in which they were received. *See generally* I.R.C. sections 561, 852, 855. For undistributed long-term capital gains, the RIC would generally deem the gains distributed and pay the applicable tax, with the investor generally receiving a pro rata credit for the amount paid. *Id.*

long-term capital gains distributions with respect to a taxable year in order not to be subject to additional tax, while section 19(b) and the rule generally permit only one.

Discussion

I. Summary of Comments

The Commission received five comment letters on the proposed amendment.[9] All of the commentators supported allowing the additional distribution. Two commentators believed, however, that the specifics of the proposal should be changed. They were concerned that the amendment would not permit a RIC to make an additional distribution of long-term capital gains that was in excess of the amount required to satisfy the Required Distribution. In addition, one of these commentators believed that the proposal was ambiguous with respect to the timing of the additional distribution, and that the amendment would impair a RIC's ability to distribute fully all realized capital gains. Finally, that commentator also believed that the condition requiring an explanation of the reason for the additional distribution is unnecessary.

The commentator that raised most of the questions concerning the proposal suggested an alternative approach under which a RIC would be permitted, unconditionally, and for any purpose, to make two distributions of long-term capital gains with respect to its fiscal year. This approach would also permit the RIC to make a distribution supplemental to the first two ("Spillover Distribution") to be based on realized, rather than distributed, gains.[10]

2. Response to the Comments

The amendment was not intended to limit the amount of the additional distribution. Consequently, the amendment's text has been changed to make clear that the only requirement is that the purpose of the distribution, in whole or in part, be to avoid imposition of any Excise Tax.[11] Thus, a RIC may distribute, as a single distribution, more than 90% of its long-term capital gains realized during a twelve-month period ended October 31.

Further, the amendment would not, as asserted by one commentator, prevent a RIC whose fiscal year ends after October 31, *e.g.*, on December 31, 1987, from distributing gains realized during November and December 1987. The amendment does not prevent such gains from being included either in the dividend representing the Required Distribution or in a separate fiscal year-end dividend distribution. The amendment permits an "additional" distribution of long-term capital gains, *i.e., in addition to* the one otherwise permitted by rule 19b–1 (for example, in addition to the distribution of November and December 1987 gains); the proposal was not phrased in terms of permitting only a "subsequent" distribution. Nevertheless, the amendment has been modified to remove this ambiguity.

Also, contrary to this commentator, the amendment would not preclude a RIC whose fiscal year ends near October 31, *e.g.*, on September 30, 1987, from distributing October 1987 gains either together with the 1987 Required Distribution or with the distribution for the fiscal year ended September 30, 1987, or as a separate distribution.[12] As indicated earlier, a distribution need not be limited to the precise amount of the Required Distribution to use the amended rule. Note also that the October 1987 distribution would be the first distribution with respect to the RIC's fiscal year ending September 30, 1988, and would, therefore, not be prohibited by rule 19b–1. The RIC, however, would have to be confident that its fiscal 1988 year-end distribution would satisfy the 1988 Required Distribution because that year-end distribution would be the second distribution covering fiscal 1988. Using the commentator's example, if it turns out that the RIC's October 1988 gains are so large in proportion to its fiscal 1988 gains that gains during its fiscal year (October 1, 1987, through September 30, 1988) do not constitute 90% of gains from November 1, 1987, through October 31, 1988, then the fiscal year 1988 year-end distribution would be a prohibited distribution because it would not satisfy the Required Distribution. One way to avoid this potential problem is for the RIC to distribute October 1987 gains as part of its fiscal 1988 year-end distribution.

The commentator further noted that, under the proposal, a distribution covering the period from November 1 to a particular RIC's fiscal year-end might be considered as the basis upon which a Spillover Distribution would be calculated.[13] Accordingly, paragraph (a) of rule 19b–1 has been modified to make clear that the maximum amount allowable as a Spillover Distribution is to be based on the aggregate of the long-term capital gains distributed for the taxable year rather than on merely the "prior distribution."[14]

The commentator also took issue with the condition to the amendment that requires the reason for the additional distribution to be included in the notice accompanying such distribution. The commentator argued that stating the reason for the distribution in the notice could limit a RIC's flexibility in making further distributions for the same fiscal year, and also could confuse investors because the aggregate dividend distribution would likely include distributions other than that made to satisfy the Required Distribution.

The Commission has concluded that stating the reason for the additional distribution in the accompanying notice is not necessary at this time.[15] Accordingly, the condition requiring an explanation of the reason for the additional distribution has been deleted from the rule.

Finally, the commentator proposed an alternative amendment which does not relate the additional distribution to the

[9] Another comment letter was received subsequent to the close of the comment period. Because that commentator made comments similar to those discussed herein, such comments will not be discussed separately.

[10] *See supra* note 5. *See also infra* note 14 and accompanying text.

[11] It should be noted that an additional distribution made merely for the purpose of reducing, rather than avoiding altogether, the Excise Tax is not permitted by the amended rule. However, should a small miscalculation of the Required Distribution result in the assessment of any Excise Tax, the conditions of the rule will still be met if the purpose of the distribution was complete avoidance of such tax.

[12] For example, if a RIC realized $180 of gain from November 1, 1987, through September 30, 1988, and an additional $20 of gain from October 1, 1988 through October 31, 1988, it could distribute the full $200, even if only $180 (90%×$200) is needed to satisfy the 1988 Required Distribution. Moreover, it could do so even if there had been a prior distribution of the gains for the October 1, 1987, to October 31, 1987, period. Although the $180 dividend would be the second distribution covering fiscal 1988, this distribution would satisfy the 1988 Required Distribution and, therefore, would meet the conditions of the amended rule.

[13] Under this construction, the Spillover Distribution would be limited to 10% of the actual taxable year-end distribution rather than the aggregate of that distribution plus the amount distributed as part of the Required Distribution attributed to the subject taxable year. *See supra* note 5.

[14] Such modification is in keeping with the original purpose of the Spillover Distribution. In the release adopting rule 19b–1, the Commission stated that the exception to the rule allowing a Spillover Distribution was for the purpose of permitting a RIC "to take advantage of the 'Spillover' provisions of the Code under which certain distributions made after the close of a taxable year are considered as made during such year." Investment Company Act Rel. No. 6834 (Nov. 23, 1971) (36 FR 232 (Dec. 2, 1971)). Thus, the suggestion by the commentator that the Spillover Distribution be calculated on gains, rather than distributions, was not adopted.

[15] Section 19(a) of the Act (15 U.S.C. 80a–19(a)), and rule 19a–1 thereunder (17 CFR 270.19a–1), however, would still require distributions by RICs to be accompanied by a notice disclosing the source or sources of each distribution.

Excise Tax provision. This approach is too broad. The language and history of section 19(b) of the Act reflect an intent to limit an investment company's distributions of long-term capital gains to one with respect to each taxable year. While the Commission has broad exemptive rulemaking authority under the Act, it may not use that authority to override concerns specifically addressed by Congress. However, sections 6(c) and 19(b) do provide flexibility for the Commission to use its authority in unique circumstances not contemplated by Congress during passage of the Act.[16] In this instance, it was the enactment of the Excise Tax provision that gave to link the amendment to that legislation.

Conclusion

The purpose of the amendment is to aid RICs to avoid unnecessary taxation. The amendment allows RICs the flexibility to make decisions regarding certain tax consequences of distributing or not distributing long-term capital gains without the necessity of seeking exemptive relief from the Commission. Further, the Commission has modified the existing rule to clarify any ambiguity as to the timing or amount of distributions and the calculation of the maximum amount of a Spillover Distribution, and has adopted the technical corrections to the existing rule that were set forth in the Proposing Release.

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 603, regarding the proposed amendment to rule 19b–1 was published in the Proposing Release. No comments were received on that analysis. The Commission has prepared a Final Regulatory Flexibility Act Analysis, prepared in accordance with 5 U.S.C. 604, a copy of which may be obtained by contacting Brian M. Kaplowitz, Esq., Mail Stop 5–2, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Paperwork Reduction Act

The Office of Management and Budget approved the amendment to rule 19b–1 on July 31, 1987.

[16] As is relevant here, section 6(c) of the Act provides that the Commission may grant an exemption from the provisions of the Act or any rule thereunder, "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this [Act]."

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendments to Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is amended by adding the following citation:

Authority: Secs. 38, 40, 54, Stat. 841, 842; 15 U.S.C. 80a–37, 80c–89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 et seq.; unless otherwise noted.

* * * Section 270.19b–1 is also issued under secs. 6(c) (15 U.S.C. 80a–6(c)), 19 (a) and (b) (15 U.S.C 80a–19 (a) and (b)), and 38(a) (15 U.S.C. 80a–37(a)).

2. By amending § 270.19b–1 by revising paragraphs (a) and (c)(1)(iii), and adding a new paragraph (f) as follows:

§ 270.19b–1 Frequency of distribution of capital gains.

(a) No registered investment company which is a "regulated investment company" as defined in section 851 of the Internal Revenue Code of 1986 ("Code") shall distribute more than one capital gain dividend ("distribution"), as defined in section 852(b)(3)(C) of the Code, with respect to any one taxable year of the company, other than a distribution otherwise permitted by this rule or made pursuant to section 855 of the Code which is supplemental to the prior distribution with respect to the same taxable year of the company and which does not exceed 10% of the aggregate amount distributed for such taxable year.

* * * * *

(c) * * *

(1) * * *

(iii) The sale of an eligible trust security to maintain qualification of the Trust as a "regulated investment company" under section 851 of the Code,

* * * * *

(f) A registered investment company may make one additional distribution of long-term capital gains, as defined in the Code, with respect to any one taxable year of the company, which distribution is made, in whole or in part, for the purpose of not incurring any tax under section 4982 of the Code. Such additional distribution may be made prior or subsequent to any distribution otherwise permitted by paragraph (a) of this section.

By the Commission.

Jonathan G. Katz,

Secretary.

October 29, 1987.

[FR Doc. 87–25557 Filed 11–4–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 86C–0495]

MICA; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 11, 1987, for the final rule that amended the color additive regulations to provide for the safe use of mica in dentifrices that are drugs as well as cosmetics. FDA also changed the fineness specification for mica to permit a larger average particle size distribution.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 11, 1987 (52 FR 29664), FDA amended the color additive regulations to provide for the safe use of mica in dentifrices that are drugs as well as cosmetics and also changed the fineness specification for mica to permit a larger average particle size distribution.

FDA gave interested persons until September 10, 1987, to file objections or requests for a hearing on this final rule. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the **Federal Register** of August 11, 1987, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21

CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the August 11, 1987, final rule. Accordingly, the amendments to § 73.1496 (a)(1), (b), and (c) became effective September 11, 1987.

Dated: October 30, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-25582 Filed 11-4-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 184

[Docket No. 86G-0086]

Substances Affirmed as Generally Recognized as Safe; Glyceryl Behenate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that glyceryl behenate is generally recognized as safe (GRAS) for use as a formulation aid in excipient mixtures used in food prepared as tablets.

EFFECTIVE DATE: November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition, (HFF-334), 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In accordance with § 170.35 (21 CFR 170.35), Gattefosse Etablissements, 36 Chemin de Genas, Saint Priest, France, submitted a petition (GRASP 6G0308) requesting that glyceryl behenate be affirmed as GRAS for use as an excipient in food prepared as tablets.

FDA published a notice of filing of this petition in the **Federal Register** of June 4, 1986 (51 FR 20354), advising that any comments should be submitted to the Dockets Management Branch (HFC-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. No comments were received in response to this notice.

Glyceryl behenate has no history of food use prior to 1958.

Identity

Glyceryl behenate is a mixture of glyceryl esters (glycerides) of commercial behenic acid. It contains primarily diglycerides (47 to 59 percent) but also triglycerides (26 to 38 percent) and a smaller amount of monoglycerides (10 to 20 percent). Glyceryl behenate is similar in composition to the emulsifying agent mono- and diglycerides of edible fats and oils, or edible fat-forming acids (mono- and diglycerides), which is listed as GRAS in § 182.4505 (21 CFR 182.4505). However, glyceryl behenate contains a higher proportion of triglycerides than does mono- and diglycerides and also contains behenic acid as its primary fatty acid. Behenic acid is not commonly found in traditional edible fats and oils, although it is found in fully hydrogenated rapeseed oil, whose use is affirmed as GRAS in § 184.1555.

The notice of filing in this proceeding used the name "glyceryl behenate" to represent the material that is the subject of the petition. The agency has considered this name to be appropriate primarily for simplicity, although the material is actually not a single chemical substance.

Manufacturing Process

Glyceryl behenate is manufactured by heating a mixture of glycerin and behenic acid (a saturated C_{22} fatty acid). The reaction can proceed with or without the use of a solvent and catalysts. Nevertheless, solvents and catalysts, such as those currently used in the manufacture of fatty acid derivatives, may be used in the manufacture of this ingredient.

Commercial behenic acid, which is one of the raw materials for manufacture of glyceryl behenate, is produced from hydrogenated rapeseed oil and has the approximate composition of 88 percent behenic acid, 10 percent arachidic acid and oleic acid, and 2 percent fatty acids with a higher carbon number than C_{22} (such as lignoceric acid). It may also contain a trace amount of erucic acid but at a level of less than 1 percent.

Technical Effects and Use Levels

The proposed use of the substance is as a component of excipient mixtures used in foods prepared as tablets. The technical properties of the additive in excipient formulations are similar to those of other fatty acid glycerides. Fatty acid glycerides, in general, are excellent lubricants, have good binding effect, have good flowing potency, eliminate anv cleavage problem, and are totally inert toward active ingredients.

The petitioner stated that the normal use level of the substance will be 1 to 4 percent of total tablet weight, but that in some special cases, such as in sustained release formulations, the use level may be 10 to 20 percent. The petition contains no information that would clearly demonstrate the existence of a technological self-limiting use level.

Estimated Daily Intake

The petitioner stated that the typical dosage of vitamin pills is one or two tablets per day, but that individuals taking different vitamins in separate pills may take as many as six tablets per day.

FDA sponsored a telephone survey of vitamin/mineral supplement use in 1980 (Stewart et al., *Journal of the American Dietetic Association*, pp. 1585-1590, December 1985). This survey, although not a definitive survey of vitamin/mineral supplement use, provides the best data available for estimating potential consumption of glyceryl behenate. The survey estimated that 40 percent of U.S. consumers over 16 years of age ingest at least one supplement per day, and that the median intake of these users is one supplement per day. Using the middle value of the range of glyceryl behenate content for tablets, which is 10 percent, and using the median intake of one supplement having a typical table weight of 600 milligrams (mg) per day, the agency estimates that the likely chronic, daily intake for glyceryl behenate would be 60 mg per person per day.

In its safety review of glyceryl behenate, the agency's major concern was the potential increase in consumption of behenic acid that would result from the petitioned use of glyceryl behenate. Because 60 mg of glyceryl behenate contain about 46 mg of behenic acid, the estimated daily intake for behenic acid from this use would be 46 mg per person per day.

Safety Information

The petition cited the GRAS status of fully hydrogenated rapeseed oil (21 CFR 184.1555(a)) and superglycerinated fully hydrogenated rapeseed oil (21 CFR 184.1555(b)), and the data supporting the GRAS status of these ingredients (previously submitted in GRAS petition 4G0036), to support the safety and GRAS status of glyceryl behenate. Included in this data was a 90-day subchronic study in rats of fully hydrogenated rapeseed oil, which supported a daily intake of 189 mg of behenic acid per person after applying a 1,000-fold safety factor. This figure is significantly higher than the estimated daily intake for behenic acid (46 mg per person per day), as stated above, from the petitioned use of glyceryl behenate.

Fully hydrogenated rapeseed oil is a triglyceride, while superglycerinated fully hydrogenated rapeseed oil and glyceryl behenate are mixtures of mono-, di-, and triglycerides. Both fully hydrogenated rapeseed oil and superglycerinated fully hydrogenated rapeseed oil have the same fatty acid composition, which is a mixture of saturated fatty acids (from C_{18} to C_{24}),