

Lake City, Minnesota, and thereby engage in making and servicing loans, pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y; and in insurance agency activities, pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Security Bank Holding Company, and Security Bank Holding Company Employee Stock Ownership Plan*, both of Coos Bay, Oregon; to acquire not less than 51 percent of the voting shares of Lincoln Security Bank, Newport, Oregon (in organization).

Board of Governors of the Federal Reserve System, March 21, 1996.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 96-7321 Filed 3-26-96; 8:45 am]

BILLING CODE 6210-01-F

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of

interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Figge Bancshares, Inc.*, Davenport, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Ossian State Bank, Ossian, Iowa, and thereby indirectly acquire Iowa State Bank, Calmar, Iowa.

Board of Governors of the Federal Reserve System, March 22, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96-7434 Filed 3-26-96; 8:45 am]

BILLING CODE 6210-01-F

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether

consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Next Home Mortgage, Clive, Iowa, in residential mortgage lending business, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The co-venturers will be Norwest Ventures, Inc. and Next Generation Realty, Inc., Clive, Iowa.

Board of Governors of the Federal Reserve System, March 21, 1996.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 96-7322 Filed 3-26-96; 8:45 am]

BILLING CODE 6210-01-F

### FEDERAL TRADE COMMISSION

[File No. 932-3176]

#### The Diet Workshop, Inc.; The Diet Workshop of Boston, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the respondents from misrepresenting the results of any weight loss program they offer, require them to have scientific data to back up any claims about weight loss and maintenance, and

mandate that they make certain disclosures in connection with maintenance and other claims. The consent agreement settles allegations that the respondents engaged in deceptive advertising by making unsubstantiated weight loss and weight-loss maintenance claims and by implying, without substantiation, that the consumer testimonials they used represented the typical experience of dieters on the programs.

**DATES:** Comments must be received on or before May 28, 1996.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:**

Andrew D. Caverly, Boston Regional Office, Federal Trade Commission, Suite 810, 101 Merrimac Street, Boston, MA 02114-4719, 617-424-5960.

Gary Cooper, Boston Regional Office, Federal Trade Commission, Suite 810, 101 Merrimac Street, Boston, MA 02114-4719, 617-424-5960.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of The Diet Workshop, Inc., and The Diet Workshop of Boston, Inc., corporations.

[File No. 932-3176]

**Agreement Containing Consent Order To Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Diet Workshop, Inc. and The Diet Workshop of Boston, Inc., corporations (collectively referred to as "proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

*It Is Hereby Agreed* by and between The Diet Workshop, Inc., and The Diet Workshop of Boston, Inc., by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondents are Massachusetts corporations, with their principal office or place of business located at 1 University Office Park, 29 Sawyer Road, Waltham, Massachusetts 02154.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(b) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposed only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to purposed respondents: (a) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and

effect and may be altered, modified or set aside in the same manner and within the same time frame provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the attached draft complaint and the following order. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

*Definitions*

For the purposes of this Order, the following definitions shall apply:

A. *Competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results;

B. *Weight loss program* shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A *broadcast medium* shall mean any radio or television broadcast, cablecast, home video or theatrical release;

D. For any Order-required disclosure in a print medium to be made *clearly and prominently* or in a *clear and prominent* manner, it must be given both in the same type style and in: (1) twelve (12) point type where the representation that triggers the disclosure is given in twelve (12) point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve (12) point type. For any Order-required disclosure given orally in a broadcast medium to be made *clearly and prominently* or in a *clear and*

prominent manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure;

E. A short broadcast advertisement shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It is ordered that respondents, The Diet Workshop, Inc. and The Diet Workshop of Boston, Inc., corporations, their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, *provided, further*, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants using the program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; *provided, however*, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness; pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a

minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; *provided, further*, that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; *provided, however*, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, *provided, further*, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondents' programs:

(a) The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "Diet Workshop makes no claim that this [these] result[s] is [are] representative of all participants in the Diet Workshop program.";

*Provided, further*, that compliance with the obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, or short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

(1) include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our clinics for details about our maintenance record.";

(2) for a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C. (1)-(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgement language (Times Roman 12 pt.) and signature block therein; *provided, further*, that no information in addition to that required to be included in the document required by this subparagraph I.D. (2) shall be included therein:

#### MAINTENANCE INFORMATION

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here

\_\_\_\_\_ ]  
For many dieters, weight loss is temporary.

I have read this notice.

\_\_\_\_\_  
(Client Signature)

\_\_\_\_\_  
(Date)

(b) Require each potential client to sign such document; and

(c) Give each client a copy of such document; and

*Provided, however,* that if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondents shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

(3) Retain in each client file a copy of the signed maintenance notice required by this paragraph;

*Provided, further,* that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and

(ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term"; and *provided, however,* that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondent's weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants in respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for Diet Workshop customers in losing weight or maintaining achieved weight loss; *provided, however,* that in determining the generally expected success for Diet Workshop customers respondents may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "\_\_\_\_\_'s success is not typical. You may do not as well."

(e) "\_\_\_\_\_'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants.";

*Provided, further,* that is the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure; and *provided, however,* that:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: "Diet Workshop clients lose an average of \_\_\_\_ pounds over an average \_\_\_\_ week treatment period"; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, the rate or speed at which participants or prospective participants in any weight loss program have lost or will lose weight, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

G. Representing, directly or by implication, that participants or prospective participants in respondents' weight loss programs have reached or will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

H. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds

two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants, when they enter the program, that failure to follow the diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications.

I. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

J. Misrepresenting, directly or by implication, the performance, efficacy, or benefits of any weight loss program or weight loss product.

## II

*It is further ordered* that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporations that may affect compliance obligations arising out of this Order.

## III

*It is further ordered* that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

## IV

*It is further ordered* that respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors and employees, who is involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order, and, for a period of five (5) years from the date of entry of this Order, distribute same to all future such officers, agents,

representatives, independent contractors and employees.

V

*It is further ordered that:*

A. Respondents shall distribute a copy of this Order to each of their franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this Order; respondents may satisfy this contractual requirement by incorporating such Order requirements into their current Operations Manuals or, if they do not have a current Operations Manual, by notifying their franchisees and licensees that failure to comply with the provisions of this Order is at variance with respondents' methods, standards, and specifications for proper conduct of the franchisee's business under the franchise agreement; and

B. Respondents shall further make reasonable efforts to monitor their franchisees' and licensees' compliance with the Order provisions; respondents may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondents determine is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under their franchise or license agreements and applicable state law to bring about a cessation of that conduct by the franchisee or licensee; provided, however, that respondents' compliance with this Part shall constitute an affirmative defense to any civil penalty action arising from an act or practice of one of respondents' franchisees or licensees that violates this Order where respondents: (a) have not authorized, approved or ratified that conduct; (b) have reported that conduct promptly to the Federal Trade Commission under this Part; and (c) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the Order, have diligently pursued reasonable and appropriate remedies available under the franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI

This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII

*It is further ordered* that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Diet Workshop, Inc. and The Diet Workshop of Boston, Inc. (hereinafter "Diet Workshop" or "respondents"), marketers of the Diet Workshop low-calorie diet (hereinafter "LCD") program. The Diet Workshop diet program is offered to the public throughout much of the United States through company-owned and franchised centers.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges that the proposed respondents have made deceptive claims regarding the success consumers have had losing weight on the respondents' LCD programs, and maintaining their weight loss. Respondents also are charged with having made deceptive claims regarding the rate at which consumers lose weight while on the respondent's "Quick Loss" LCD program. Finally, the complaint alleges that the respondents have engaged in the deceptive practice of failing to warn consumers whose weight loss progress the respondents monitored of the importance to their health of consuming all of the food called for in the diet instructions.

*Success*

The complaint alleges that the proposed respondents have represented, directly or by implication, that most consumers using the Diet Workshop LCD programs (1) reach their weight loss goals and (2) maintain their weight loss either long-term or permanently. The complaint charges that, at the time they were made, the respondents did not possess or rely upon a reasonable basis for these representations.

The complaint alleges further that the respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements and promotional materials for the Diet Workshop LCD programs reflect the typical or ordinary experience of members of the public who have used the programs. The complaint charges that the respondents failed to possess or rely upon a reasonable basis for these representations.

The proposed consent order seeks to address the alleged success misrepresentations cited in the proposed complaint in several ways. First, the order (Part I.A.) requires Diet Workshop to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants in any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a

particular phase of the program or the entire program, where the representation *only* relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents' maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measures to ensure future compliance, the proposed order requires the proposed respondents for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is temporary" (Part I.B.), as well as the following information relating to that claim (Part I.C.):

(1) The average percentage of weight loss maintained by those participants (e.g., "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that participants entered the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondents' maintenance program(s) that follows active weight loss, if that is the case—e.g., "participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)", and

(3) Where the participant population referred to is not representative of the general participant population for that program, the proportion of the total participant population that those participants represent, expressed in terms of a percentage or actual numbers of participants—e.g. "Participants on maintenance—30% of our clients—kept off an average of 66% of the weight for one year (includes time on maintenance program)" or, in lieu of that factual disclosure, the statement: "Diet Workshop makes no claim that this

result is representative of all participants in the Diet Workshop program."

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (Part I.D.) requires that Diet Workshop, in lieu of making the factual disclosures required for such claims by Part I.C.: (1) Include in such advertisements the statement "Check at our centers for details about our maintenance record."; and (2) provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C., which form must be signed by the client and retained in the respondents' client file.

The proposed order makes clear that this alternative disclosure requirement does not relieve Diet Workshop of the obligation to substantiate any maintenance success claim, in accordance with Part I.A. of the order, and it "takes back" the exception from full quantitative disclosures in short broadcast advertising if Diet Workshop makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term." Diet Workshop in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight loss and weight loss maintenance success claims made through endorsements or testimonials that are not representative of what Diet Workshop diet program participants generally achieve, the order (Part I.E.) requires that Diet Workshop disclose either what the generally expected success would be for Diet Workshop customers, or one of several alternative statements, such as "This result is not typical. You may be less successful", which explains the limited applicability of atypical testimonials in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" 16 C.F.R. 255.2 (a). Under the proposed order, Diet Workshop may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: "Diet Workshop clients lose an average of \_\_\_\_\_ pounds over an average \_\_\_\_\_—week treatment period."

Finally, the proposed order (Parts I.I. and I.J.) generally prohibits the respondents from misrepresenting (1) the existence, contents, validity, results, conclusions, or interpretations of any test or study; and (2) the performance, efficacy, or benefits of any weight loss program or product.

#### *Rate of Weight Loss*

The complaint alleges that the proposed respondents have represented, directly or by implication, that an appreciable number of consumers using the Diet Workshop's "Quick Loss" LCD program lose up to 20 pounds in a six-week period. The complaint charges that, at the time this representation was made, the respondents did not possess or rely upon a reasonable basis for the representation.

The proposed consent order (Part I.F.) prohibits Diet Workshop from representing the rate or speed at which participants in its LCD programs will lose weight, unless at the time of making such representation, Diet Workshop possesses and relies upon competent and reliable scientific evidence substantiating the representation. In addition, the proposed order (Part I.G.) prohibits Diet Workshop from representing that participants or prospective participants in Diet Workshop LCD programs will reach a specified weight within a specified period of time, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

#### *Monitoring Practices*

According to the complaint, Diet Workshop provides its customers with diet instructions that require the customers to come in to one of the proposed respondents' centers once a week for monitoring of their progress, including weighing in. It is further alleged that in the course of regularly ascertaining weight loss progress, respondents, in some instances, are presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet instructions. According to the complaint, such conduct, if not corrected promptly, could result in health complications. In light of this monitoring practice, the Commission's complaint alleges that Diet Workshop has failed to disclose to customers who are losing weight significantly in excess of their projected goals that failing to follow the diet instructions and consume all of the food prescribed could result in health complications.

The proposed consent order seeks to address this alleged deceptive practice in two ways. First, the order (Part I.H.) requires respondents to disclose in writing either (1) to each participant

who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participants' initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) to all participants when they enter the program, that failure to follow the diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications. Second, the proposed order (Part I.J.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

#### *Compliance*

Parts II, III, IV, V and VII of the proposed order are compliance reporting provisions that require the respondents to: notify the Commission of any changes in the structure of the respondents that may affect their compliance obligations under the order; retain all records that would bear on the respondents' compliance with the order; distribute copies of the order to the respondents' operating divisions and to those persons responsible for the preparation and review of advertising material covered by the order; distribute a copy of the order to each of the respondents' franchisees and licenses, take steps to contractually bind the franchisees and licensees to the order, and take certain additional steps designed to encourage or require the franchisees and licensees to comply with the order; and report to the Commission their compliance with the terms of the order.

Part VI of the proposed order provides generally that the proposed order will sunset twenty years from the date of issuance, unless a complaint to enforce the order (with or without an accompanying consent decree) was/is filed while the order was/is in force. In such a case, the order sunsets twenty years after the filing of the complaint.

The purpose of this analysis is to facilitate public comment on the proposed interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

*Secretary.*

[FR Doc. 96-7294 Filed 3-20-96; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409-24, August 31, 1982, as amended most recently at 61 FR 1595 dated January 22, 1996) is amended to reflect the name change for the Division of Personnel within the Office of Operations and Management, Office of the Administrator, Health Resources and Services Administration (HRSA).

*Under HB-10, Organization and Functions*, amend the functional statements for the *Office of Operations and Management (HBA4)* as follows:

(1) Delete the functional statements for the *Division of Personnel (HBA44)*; and

(2) Add the following functional statement immediately after the functional statement for the *Division of Financial Management (HBA43)*:

Office of Human Resources and Development (HBA44). Provides Agency wide personnel management assistance to all Health Resources and Services Administration employees, both headquarters and field. Specifically: (1) Plans, conducts and evaluates the Agency's human resource studies, programs, policies and reports; (2) provides advice and assistance to management officials on individual actions arising from headquarters and field components; (3) administers the Agency's training functions; (4) acts as the focal point for the agency's labor relations activities; (5) develops and provides guidelines and regulations for the Agency's personnel programs; (6) administers the Agency's Ethics Program; (7) administers the Agency's merit and performance awards programs; (8) plans, directs and administers the appointing and processing of civil service employees; (9) plans and conducts position management surveys; (10) operates and oversees the Agency's merit promotion program; (11) manages and coordinates the Agency's personnel security program; (12) ensures that management practices and policies related to the Commissioned Corps are coordinated throughout the Agency; (13) and ensures compliance with established personnel rules and regulations governing HRSA.

*Delegation of Authority.* All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this consolidation will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this consolidation.

This consolidation is effective upon date of signature.

Dated: March 14, 1996.

Ciro V. Sumaya,

*Administrator.*

[FR Doc. 96-7308 Filed 3-26-96; 8:45 am]

BILLING CODE 4160-15-M

## Centers for Disease Control and Prevention

### Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

*Name:* Advisory Council for the Elimination of Tuberculosis (ACET).

*Times and Dates:* 8:30 a.m.-5p.m., April 25, 1996; 8:30 a.m.-1 p.m., April 26, 1996.

*Place:* Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Purpose:* This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

*Matters to be Discussed:* Agenda items include: an update on research and TB among the foreign-born; considerations for managed care; newly approved rapid diagnostic tests for TB; recommendations for public health advocacy in TB during continuing decreases in morbidity trends; organizational approaches to community-based TB control in a managed care environment; challenges for local health departments in TB control at a community level managed care environment; and a pilot study of the effects of Medicaid managed care on structures, processes, and outcomes relevant to community-wide TB prevention and control.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Tracy Whitnell, Program Analyst, National