§ 71.209 [Amended]

3. Section 71.209 is amended as follows:

CARPS [Amended]

By removing the word "Jacksonville" and substituting the word "Craig".

SQUID [Amended]

By removing the word "Jacksonville" and substituting the word "Craig".

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

4. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

5. Section 75.100 is amended as follows:

J-48, J-145, J-186 [Amended]

Wherever the words "Toccoa, GA" appear, substitute the words "Foothills, SC".

J-45, J-51, J-53, J-55, J-121, J-174 [Amended]

Wherever the word "Jacksonville" appears, substitute the word "Craig".

Issued in Washington, DC, on May 8, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-11920 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 862 3125]

Nutritone, Inc., d/b/a Body By Design, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed 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, among other things, a Massachusetts corporation from making certain claims for electric muscle stimulation ("EMS") treatment programs and products unless they possess reliable scientific evidence that substantiates such claims. Respondent would be required to retain records supporting any future advertising and also would be required to post a copy of the order on the premises.

DATE: Comments must be received on or before July 17, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 10 Causeway St., Room 1184, Boston, Ma. 02222-1073. (617) 565-7240.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 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 § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Electric muscle stimulation treatments, Health clubs, Trade practices.

In the matter of Nutritone, Inc., a corporation, trading and doing business as BODY BY DESIGN, and Dinah H. Simonini, and Donald L. Simonini, individually, and as officers of the corporation

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nutritone, Inc., a corporation, d/b/a Body By Design, and Dinah H. Simonini and Donald L. Simonini, individually and as officers of Nutritone, Inc., and it now appearing that Nutritone, Inc., and Dinah H. Simonini and Donald L. Simonini, hereinafter sometimes referred to as 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 Nutritone, Inc., and Dinah H. Simonini and Donald L. Simonini, individually and as officers of Nutritone, Inc., and their counsel, and counsel for the Federal Trade Commission that:

1. Nutritone, Inc., hereinafter referred to as the corporation, is a corporation organized existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business at 1172 Beacon Street, Newton, Massachusetts 02161.

2. Proposed respondents Dinah H. Simonini and Donald L. Simonini are officers of the corporate respondent named herein. They have formulated, directed and controlled the acts and practices of the corporation, including all the acts and practices set forth below. Their address is the same as that of the corporate respondent.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of the complaint here attached.

4. Proposed respondents waive:

a. Any further procedural steps;

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

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

d. All rights under the Equal Access to Justice Act.

5. 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 draft of complaint contemplated thereby, 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.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

7. 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 proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) 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 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' address 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.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they 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

I.

It is ordered That respondents Nutritone, Inc., a corporation, its officers, and Dinah H. Simonini and Donald L. Simonini, individually and as officers of the corporation, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any electric muscle stimulation treatment program or product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist form representing, directly or by implication, contrary to fact, that any low frequency (1000 Hz and below) electric muscle stimulation treatment or product:

A. Can cause muscle contractions of similar intensity to those produced by conventional exercise.

B. Will visibly change the girth of any part of the body without a reduction in caloric intake or participation in a weight loss program.

C. Provides similar or superior health benefits to those produced by rigorous conventional exercise for normal healthy people.

D. Provides, in the same or shorter time period, health benefits similar or superior to those produced by conventional exercise.

E. Are a result of any new or recent scientific and technological research and experimentation.

II.

It is further ordered That respondents Nutritone, Inc., a corporation, its officers, and Dinah H. Simonini and Donald L. Simonini, individually and as officers of the corporation, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any diet, strength development, or fitness program or product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning such program's or product's efficacy, or comparability or superiority over any other program(s) or product(s), or the results typically achieved by any consumer(s) of the program or product unless, at the time of making such representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; provided, however, that for purposes of this Order for any test, analysis, research, study, or other evidence to be "competent and reliable" it must be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered That resondents shall for at least five years after the date of the last dissemination of the representation, maintain and upon reasonable request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials that were relied upon by respondents in disseminating any representation covered by this order.

2. All test reports, studies, surveys, or demonstrations in their possession or control that contradict any representation that is covered by this order.

IV.

It is further ordered That respondents shall conspiciously post a copy of this order on their premises.

V.

It is further ordered That the corporate respondent and the individual respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidaries or any other change in the corporation which may affect compliance obligations arising out of the order, or of any change in the position or responsibilities of Dinah H. Simonini or Donald L.Simonini in regard to any corporation or subsidiary of which either is an officer and which corporation or subsidiary is, directly or indirectly, involved in the sale or distribution of any electric muscle stimulation treatment program or product.

VI.

It is further ordered That the respondents shall, within sixty (60) days after 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 is order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Nutritone, Inc., a corporation, d/b/a Body By Design, and Dinah H. Simonini and Donald L. Simonini, officers of Nutritone, Inc. (collectively, the "respondents"). Under this agreement, the respondents will cease and desist from making certain claims for treatment programs and products unless they possess reliable scientific evidence that substantiates such claims.

The proposed consent order has been placed on the public record for sixty (60) days for receipt 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 the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the proposed order contained in the agreement.

This matter concerns advertisements for electric muscle stimulation treatment programs and products. The Complaint accompanying the proposed consent order alleges that, in connection with promoting these treatment programs and products, the respondents engaged in deceptive acts and practices in violation

of section 5 of the Federal Trade Commission Act and that the respondents disseminated false advertisements in violation of section 12 of the Federal Trade Commission Act. According to the Complaint, the respondents represented that these treatment programs and products would cause muscle contractions comparable to those resulting from conventional exercise such as situps and pushups. They also claimed that the treatments would result in a "V" shape for men and tone stomachs, thighs and buttocks.

The Complaint also alleges that the advertisements were deceptive because the respondents represented to consumers that they possessed a reasonable basis for the challenged representations when, in fact, respondents had no reasonable basis for these representations.

The consent order contains provisions designed to prevent the respondents from engaging in similar allegedly illegal acts and practices in the future.

Specifically, Part I of the order prohibits the respondents from representing that any electric muscle stimulation treatment or product will:

1. Cause muscle contractions similar to those produced by exercise.
2. Will visibly change the girth or any part of the body without a reduction in caloric intake or participation in a weight loss program.
3. Provide similar or superior health benefits to those produced by rigorous conventional exercise.
4. Provide, in the same or shorter time period, health benefits similar or superior to those produced by conventional exercise. Part I also prohibits respondents from claiming that EMS treatments or products are the result of any new or recent scientific and technological research and experimentation.

Part II of the order prohibits the respondents from representing that any diet, strength development, or fitness program or product will provide certain benefits or is comparable or superior to other programs or products unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part III of the order requires the respondents to (1) retain records supporting any future advertising and (2) retain any records that contradict any such advertising.

Part IV of the order requires the respondents to post a copy of the order on the premises.

Finally, Part V of the order requires the corporate respondent and the individual respondents to give prior notification to the Federal Trade Commission of any changes or sale of the corporate respondent. The individual respondents must also notify the Commission in the event they change positions or responsibilities in any corporation that is involved in electric muscle stimulation programs or products and in which either individual respondent is an officer.

Donald S. Clark,

Secretary.

[FR Doc. 89-11947 Filed 5-17-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

RIN 1545-AK41

Minimum Coverage Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986. They reflect changes made by the Tax Reform Act of 1986. This document also contains amendments to previously proposed regulations relating to the minimum participation requirements under section 401(a)(26) of the Code. These regulations will provide the public with guidance necessary to comply with the law and would affect sponsors of and participants in pension, profit-sharing and stock bonus plans and certain other employee benefit plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed July 17, 1989. These regulations are proposed to be effective for plan years commencing on or after January 1, 1989, except as set forth in proposed § 1.410(b)-10.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:TR (EE-128-86) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Nancy J. Marks, 202-343-6954 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, the rules proposed in this document will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 410(b) of the Internal Revenue Code of 1986 (Code). These amendments are proposed to conform the regulations to section 1112(a) of the Tax Reform Act of 1986 (TRA '86) (100 Stat. 2448).

Overview of Provisions

Section 1112(a) of TRA '86 amended section 410(b) to modify the minimum coverage rules applicable to qualified plans. The new rules generally are effective for plan years beginning after December 31, 1988. Under the new coverage rules, a plan is a qualified plan only if it satisfies at least one of three minimum coverage tests: (1) The percentage test; (2) the ratio test; and (3) the average benefit test.

Under the percentage test, a plan must benefit at least 70 percent of the employer's nonhighly compensated employees. Under the ratio test, a plan must benefit a percentage of the nonhighly compensated employees that is at least 70 percent of the percentage of the highly compensated employees who benefit under the plan. Finally, under the average benefit test, a plan must benefit a classification of employees that the Secretary finds not to be discriminatory in favor of highly compensated employees (nondiscriminatory classification test) and the average benefit percentage of the nonhighly compensated employees must be at least 70 percent of the average benefit percentage of the highly compensated employees (average benefit percentage test).

By adding the average benefit test to section 410(b), TRA '86 effectively combined the section 410(b) minimum coverage rules and the section 401(a)(4) general nondiscrimination rules. The legislative history to TRA '86 indicates that the average benefit percentage test generally is to be applied in the same manner as the general nondiscrimination rules have been applied with respect to the amount of contributions or benefits under an employer's qualified plans.

Before TRA '86, the primary statement of the Service on the calculation of the amount of contributions and benefits was Rev. Rul. 81-202, 1981-2 C.B. 93. The legislative history to TRA '86 indicates that, in general, the approach of Rev. Rul. 81-202 is to form the basis for applying the average benefit