of Endorsements and Testimonials in Advertising" 16 C.F.R. 255.2 (a). Under the proposed order, Formu-3 may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: "Form-You-3 Weight Loss Centers clients lose an average of ______ pounds over an average _____ - week treatment period."

Finally, the proposed order (Part I.L.) generally prohibits Formu-3 from misrepresenting the performance or efficacy of any weight loss program.

Rate of Weight Loss

The Commission's complaint further alleges that Formu-3 failed to possess a reasonable basis for claims it made concerning the rate of weight loss for participants in its program and that the rate of weight loss claims it made were false.

The proposed consent order addresses these practices (Part I.F.) by prohibiting Formu-3 from representing that participants in its program will lose weight at an average or typical rate or speed unless Formu-3 possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Projection of Weight Loss

The Commission's complaint also alleges that Formu-3 failed to possess a reasonable basis for its claim, made during initial sales presentations, that consumers will typically reach their desired weight-loss goals within the time frame computed by Formu-3 personnel.

To address this practice, the proposed order (Part I.G.) prohibits Formu-3 from representing that prospective participants will reach a specified weight within a specified period of time, unless proposed respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

Price

The Commission's complaint against Forum-3 also alleges that Formu-3 failed to disclose adequately to consumers the total price of the diet program.

The proposed consent order seeks to address the practice in two ways. First, Part I.I. of the proposed order prohibits Formu-3 from advertising a daily, weekly or monthly price for its program unless it also discloses: (1) the number of days, weeks or months participants will be required to pay the advertised price; or (2) the total cost of the weight loss program. Second, Part I.L. of the order prohibits Formu-3 from

misrepresenting the price of the program in any way.

Monitoring Practices

According to the complaint, Formu-3 provides its customers with diet protocols that require customers to come in to one of proposed respondents' centers three times per week for monitoring of their progress, including weighing-in. 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 protocol. According to the complaint, such conduct could, if not corrected promptly, result in health complications. In light of this monitoring practice, the Commission's complaint alleges that Formu-3 has failed to disclose to consumers who are losing weight significantly in excess of their projected goals that failing to follow the diet protocol and consume all of the food prescribed could result in health complications.

The proposed consent order seeks to address the alleged monitoring misrepresentation cited in the accompanying complaint in two ways. First, the order (Part I.H.) requires Formu-3 to disclose in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order (Part I.L.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

Certified Counselors

The Commission's complaint also charges that Formu-3 falsely claimed counselors employed in its diet centers are certified by an objective evaluation process in the treatment of obesity.

The order seeks to address this practice by prohibiting Formu-3 from misrepresenting the competence, training or expertise of any of its employees or employees of its franchisees. (Part I.J.)

Benefits of Food Products

The complaint alleges that Formu-3 misrepresented the benefits to dieters of the food products it sells. To remedy this practice, the order (Part I.K.) prohibits respondents from misrepresenting the existence or amount of calories, fat or any other nutrient or

ingredient in any food product, or the benefits of any such product.

Parts II. and III. of the order allow respondents to make claims about food products and drugs that are specifically permitted in labeling by regulations of the Food and Drug Administration or the Department of Agriculture pursuant to statutes administered by those agencies.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–2306 Filed 1–30–95; 8:45 am]

[File No. 941 0124]

Nestle Food Company; 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 allow, among other things, Nestle, a Californiabased manufacturer, to complete its planned acquisition of Alpo PetFoods, but would require that it divest the Fort Dodge, Iowa, manufacturing plant within twelve months. The consent agreement also would require Nestle to obtain prior Commission approval of the divestiture and if not completed on time, would permit the Commission to appoint a trustee to complete the transaction. In addition, the consent agreement would require Nestle, for ten years, to obtain Commission approval before acquiring stock in any entity engaged in, or assets used for, manufacturing canned cat food in the United States.

DATES: Comments must be received on or before April 3, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe or Stephen Riddell, FTC/ S-2105, Washington, DC 20580. (202) 326-2610 or 326-2721.

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