Section 229.38 Liability

* * * * *

(d) Responsibility for certain aspects of checks.—(1) * * *

(2) *Responsibility for payable through checks.* This paragraph provides that the bank by which a payable through check is payable is liable for damages under paragraph (a) of this section to the extent that the check is not returned through the payable through bank as quickly as would have been necessary to meet the requirements of § 229.30(a)(1) (the 2-day/4-day test) had the bank by which it is payable received the check as paying bank on the day the payable through bank received it. The location of the bank by which a check is payable for purposes of the 2-day/4-day test may be determined from the location or the first four digits of the routing number of the bank by which the check is payable. This information should be stated on the check. (See § 229.36(e) and accompanying Commentary.) Responsibility under paragraph (d)(2) does not include responsibility for the time required for the forward collection of a check to the payable through bank.

Generally, liability under paragraph (d)(2) will be limited in amount. Under § 229.33(a), a paying bank that returns the amount of $2,500 or more is not returned through the payable through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depositary bank should not suffer damages unless it has not received timely notice of nonpayment. Thus, ordinarily the bank by which a payable through check is payable would be liable under paragraph (a) only for checks in amounts up to $2,500, and the paying bank would be responsible for notice of nonpayment for checks in the amount of $2,500 or more.

Responsibility under paragraphs (d)(1) and (d)(2) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraphs (d)(1) and (d)(2) is treated in the same way as the degree of negligence under paragraph (c) of this section.

By order of the Board of Governors of the Federal Reserve System, July 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18098 Filed 8-3-89; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270, 274, 275, and 279

[Release Nos. IC-17085; IA-1181; File No. S7-16-88]

RIN 3235-AD37

Forms for Filing by Accountants

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of forms and amendments to related rules.

SUMMARY: The Commission is adopting three new forms to be used by accountants when filing examination certificates required under the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The forms will make the examination certificates more accessible for inspection by the Commission staff and the public and will facilitate verification of compliance with examination requirements.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Ernest P. Francis, Attorney, or Kenneth J. Berman, Special Counsel, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-2, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting Forms N-17f-1, N-17f-2, and ADV-E to serve as cover pages for examination certificates filed by accountants under rules 17f-1, (17 CFR 270.17f-1) and 17f-2 (17 CFR 270.17f-2) under the Investment Company Act of 1940 (15 U.S.C. 80.a-1 *et seq.*) and rule 206 (4)-2 (17 CFR 275.206 (4)-2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*). In addition, the Commission is adopting rule revisions to require the use of the proposed forms.

Discussion

On August 2, 1988 the Commission published for comment proposed forms N-17-f-1, N-17f-2, and ADV-E and proposed amendments to the rules requiring the filing of accountants certificates.[1] The Commission received one comment, from the Financial Planner/Investment Adviser Committee of the North American Securities Administrators Association, Inc. ("NASAA"), supporting the proposed forms and rule amendments.[2] Accordingly, the Commission is adopting the forms and rule amendments as proposed.

The forms being adopted today will serve as cover sheets for the examination certificates that Commission rules now require certain investment companies and investment advisers to have accountants file. Examination certificates are required after an accountant has verified by actual inspection (1) securities or similar investments of a management investment company that are placed in the custody of a member of a national securities exchange; [3] (2) securities and similar investments of a management investment company maintained in the custody of the company; [4] and (3) securities and funds of clients in the custody of an investment adviser.[5] The amendments to rules 17f-1, 17f-2, and 206(4)-2 being adopted today require that the appropriate form be attached as a cover sheet to all examination certificates filed with the Commission.

By providing an accurate means to identify the registrant on whose behalf a certificate is filed, the forms and rules will make the examination certificates more accessible for inspection by the staff and the public and will facilitate staff verification of compliance with examination requirements. Because the rules simply require the addition of a cover sheet to current required filings, they do not create any significant burden to investment companies, investment advisers, or their accountants.[6]

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission previously certified that the forms and amendments adopted today will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

List of Subjects in 17 CFR Parts 270, 274, 275, and 279

Investment companies, Reporting and recordkeeping requirements, Securities, Investment advisers.

Text of Rule

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for Part 270 continues to read, in part, as follows:

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[1] Release Nos. IC-16511, IA-1133 (Aug. 2, 1988) (53 FR 29914 (Aug. 9, 1988)).

[2] The Board of Directors of NASAA endorsed the concept of these forms on April 30, 1989. The Commission anticipates that the forms will eventually be used for filings with both the Commission and state securities agencies.

[3] Rule 17f-1(b)(4) (17 CFR 270.17f-1(b)(4)).

[4] Rule 17f-2(f) (17 CFR 270.17f-2(f)).

[5] Rule 206(4)-2(a)(5) (17 CFR 275.206(4)-2(a)(5)).

[6] Less than one percent of investment companies are currently subject to the provisions of rule 17f-1, less than five percent of investment companies are subject to the provisions of rule 17f-2, and less than ten percent of all investment advisers are subject to the provisions of rule 206(4)-2.

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37, 80a–39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

2. By revising paragraph (b)(4) of § 270.17f–1 to read as follows:

§ 270.17f–1 Custody of securities with members of national securities exchanges.

* * * * *

(b) * * *

(4) Such securities and investments shall be verified by actual examination at the end of each annual and semi-annual fiscal period by an independent public accountant retained by the investment company, and shall be examined by such accountant at least one other time, chosen by the accountant, during each fiscal year. A certificate of such accountant stating that an examination of such securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N–17f–1 (17 CFR 274.219) and transmitted to the Commission promptly after each examination.

* * * * *

3. By revising paragraph (f) of § 270.17f–2 to read as follows:

§ 270.17f–2 Custody of investments by registered management investment company.

* * * * *

(f) Such securities and similar investments shall be verified by actual examination by an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such company. A certificate of such accountant stating that an examination of such securities and investments has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N–17f–2 (17 CFR 274.220) and transmitted to the Commission promptly after each examination.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority citation for Part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

5. By adding § 274.219 to read as follows:

§ 274.219 Form N–17f–1, cover page for each certificate of accounting of securities and similar investments of a management investment company in the custody of a member of a national securities exchange, filed pursuant to rule 17f–1.

Text of Form N–17F–1

See Appendix A. Form N–17f–1 will not be codified in the Code of Federal Regulations.

6. By adding § 274.220 to read as follows:

§ 274.220 Form N–17f–2, cover page for each certificate of accounting of securities and similar investments in the custody of a registered management investment company, filed pursuant to rule 17f–2.

Text of Form N–17F–2

See Appendix B. Form N–17f–2 will not be codified in the Code of Federal Regulations.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 275 continues to read:

Authority: Secs. 203, 54 Stat. 850, as amended, 15 U.S.C. 80b–3; sec. 204, 54 Stat. 852, as amended, 17 U.S.C. 80b–4; sec. 206A, 84 Stat. 1433, as added, 15 U.S.C. 80b–6A; sec. 211, 54 Stat. 855, as amended, 15 U.S.C. 80b–11, unless otherwise noted.

8. By revising paragraph (a)(5) of § 275.206(4)–2 as follows:

§ 275.206(4)–2 Custody or possession of funds or securities of clients.

(a) * * *

(5) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV–E (17 CFR 279.8) and transmitted to the Commission promptly after each examination.

* * * * *

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

9. The authority citation for Part 279 continues to read:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

10. By adding § 279.8 to read as follows:

§ 279.8 Form ADV–E, cover page for certificate of accounting of securities and funds in possession or custody of an investment adviser.

Text of Form ADV–E

See Appendix C. Form ADV–E will not be codified in the Code of Federal Regulations.

By the Commission.

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

FORM M–17f–1

Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges

OMB APPROVAL
OMB Number: 3235–0359
Expires: July 31, 1991
Estimated average burden hours per response—0.05

Pursuant to Rule 17f–1 [17 CFR 270.17f–1]

Date examination completed:
1. Investment Company Act File Number:
2. State Identification Number:

AL	AK	AZ	AR	CA	CO
CT	DE	DC	FL	GA	HI
ID	IL	IN	IA	KS	KY
LA	ME	MD	MA	MI	MN
MS	MO	MT	NE	NV	NH
NJ	NM	NY	NC	ND	OH
OK	OR	PA	RI	SC	SD
TN	TX	UT	VT	VA	WA
WV	WI	WY	PR		
Other (specify):					

3. Exact name of investment company as specified in registration statement:
4. Address of principal executive office: (number, street, city, state, zip code)

Instructions

This Form must be completed by investment companies that place or maintain securities or similar investments in the custody of a company that is a member of a national securities exchange.

Investment company

1. All items must be completed by the investment company.

2. Give this Form to the independent public account who, in compliance with Rule 17f–1 under the Act and applicable state law, examines securities and similar investments in the custody of a company that is a member of a national securities exchange.

Accountant

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 17f–1 under the Act and applicable state law.

File the original and one copy with the Securities and Exchange Commission's principal office in Washington, D.C., one copy with the regional office for the region in which the investment company's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

This Form Must Be Given to Your Independent Public Accountant

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Form M-17f-2

Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies

Appendix B

OMB Approval
OMB Number: 3235-0360
Expires: July 31, 1991
Estimated average burden hours per response: 0.05

Pursuant to Rule 17f-2 [17 CFR 270.17f-2]

Date examination completed:
1. Investment Company Act File Number: 811-
2. State Identification Number:

AL	AK	AZ	AR	CA	CO
CT	DE	DC	FL	GA	WI
ID	IL	IN	IA	KS	KY
LA	ME	MD	MA	MI	MN
MS	MO	MT	NE	NV	NH
NJ	NM	NY	NC	ND	OH
OK	OR	PA	RI	SC	SD
TN	TX	UT	VT	VA	WA
WV	WI	WY	PR		
Other (specify):					

3. Exact name of investment company as specified in registration statement:
4. Address of principal executive office: (number, street, city, state, zip code)

Instructions

This Form must be completed by investment companies that have custody of securities or similar investments.

Investment Company

1. All items must be completed by the investment company.

2. Give this Form to the independent public accountant who, in compliance with Rule 17f-2 under the Act and applicable state law, examines securities and similar investment in the custody of the investment company.

Accountant

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 17f-2 under the Act and applicable state law. File the original and one copy with the Securities and Exchange Commission's principal office in Washington, D.C., one copy with the regional office for the region in which the investment company's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

This Form Must be Given to Your Independent Public Accountant

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208 New Executive Office Building, Washington, D.C. 20503.

Appendix C

Form ADV-E

Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser

OMB APPROVAL
OMB Number: 3235-0361
Expires: July 31, 1991
Estimated average burden hours per response: 0.05

Pursuant to Rule 206(4)-2 [17 CFR 275.206(4)-2]

Date examination completed:
1. Investment Adviser Act SEC File Number: 801-
2. State Identification Number:

AL	AK	AZ	AR	CA	CO
CT	DE	DC	FL	GA	HI
ID	IL	IN	IA	KS	KY
LA	ME	MD	MA	MI	MN
MS	MO	MT	NE	NV	NH
NJ	NM	NY	NC	ND	OH
OK	OR	PA	RI	SC	SD
TN	TX	UT	VT	VA	WA
WV	WI	WY	PR		
Other (specify):					

3. Full name of investment adviser: (if individual, state last, first, middle name):
4. Name under which business is conducted, if different from above:
5. Address of principal place of business (number, street, city, state, zip code):

Instructions

This Form must be completed by investment advisers who possess or have custody of client funds or securities. This Form may *not* be used to amend any information included in an investment adviser's registration statement (*e.g.* business address).

Investment Adviser

1. All items must be completed by the investment adviser.

2. Give this Form to the independent public accountant who, in compliance with Rule 206(4)-2(a)(5) under the Act and applicable state law, examines client funds and securities in the custody or possession of the investment adviser.

Accountant

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 206(4)-2(a)(5) under the Act and applicable state law. File the original and one copy with the Securities and Exchange Commission's principal office in Washington, DC, one copy with the regional office for the region in which the investment adviser's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

This Form Must Be Given to Your Independent Public Accountant

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208 New Executive Office Building, Washington, DC 20503.

[FR Doc. 89-18182 Filed 8-3-89; 8:45 am]
BILLING CODE 3010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses: Amendment of Standards of Identity to Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending standards of identity for several cheeses to permit the use of antimycotics on the exterior of bulk cheeses during curing and aging and on the exterior of those cheeses for manufacturing. The agency is also amending several standards to update the format and language of the standards to make them consistent with the natural cheese standards that FDA revised in 1983, to provide for safe and suitable functional ingredient categories, and to provide for optional ingredient labeling requirements. This action, which responds to a citizen petition from the National Cheese Institute, will reduce waste in cheese manufacturing and will promote honesty and fair dealing in the interest of consumers. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposal to amend several additional cheese standards of identity to permit the use of antimycotics on the exterior of those cheeses.

DATES: Effective October 3, 1989; written objections and requests for a hearing by September 5, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0110.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of September 21, 1987 (52 FR 35426). FDA published a proposal that was based on a petition submitted by the National Cheese Institute (NCI), a trade association representing U.S. cheese manufacturers. In that document, FDA proposed to amend the standards of identity for brick cheese (21 CFR 133.108), brick cheese for manufacturing (21 CFR 133.109), washed curd and soaked curd cheese (21 CFR 133.136), washed curd cheese for manufacturing (21 CFR 133.137), edam cheese (21 CFR 133.138), granular and stirred curd cheese (21 CFR 133.144), granular cheese for manufacturing (21 CFR 133.145), monterey cheese and monterey jack cheese (21 CFR 133.153), muenster and munster cheese (21 CFR 133.160), muenster and munster cheese for manufacturing (21 CFR 133.161), and, by cross-reference, gouda cheese (21 CFR 133.142) and high-moisture jack cheese (21 CFR 133.154) to permit the expanded use of safe and suitable antimycotics (currently permitted on cuts and slices in consumer-sized packages for a number of standardized cheeses) on the exterior of bulk cheeses during curing and aging and on the exterior of cheeses for manufacturing.

FDA also proposed, as requested by NCI, to amend the standards of identity for brick cheese (§ 133.108), washed curd and soaked curd cheese (§ 133.136), granular and stirred curd cheese (§ 133.144), monterey cheese and monterey jack cheese (§ 133.153), and muenster and munster cheese (§ 133.160) to make the format and language of those standards consistent with the format and language of the standards for nine natural cheeses that FDA revised to conform more closely to the Codex international standards for those foods (see 48 FR 2736; January 21, 1983). On its own initiative, FDA proposed to similarly update the format and language of the standards of identity for cook cheese, koch kaese (21 CFR 133.127), cream cheese (21 CFR 133.133), cream cheese with other foods (21 CFR 133.134), gammelost cheese (21 CFR 133.140), gorgonzola cheese (21 CFR 133.141), grated cheeses (21 CFR 133.146), neufchatel cheese (21 CFR 133.162), nuworld cheese (21 CFR 133.164), roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk (21 CFR 133.184), sap sago cheese (21 CFR 133.186), spiced cheeses (21 CFR 133.190) and, by cross-reference, part-skim spiced cheeses (21 CFR 133.191).

The agency also proposed to revise the standard of identity for blue cheese (21 CFR 133.106) by removing § 133.106(a)(2). That provision, which established a maximum phenol equivalent value when unpasteurized dairy ingredients are used in the manufacture of the cheese, was erroneously included in the standard when it was revised in 1978 (see 43 FR 42127; September 19, 1978).

Interested persons were given until November 20, 1987, to submit comments.

II. Comments

Six letters, each containing one or more comments, were received from trade associations, industry, and a consumer in response to the proposal. Three of the letters were in favor of the proposed amendment.

Several comments suggested substantive amendments that require the promulgation of a separate proposal so that interested persons would have the opportunity to comment. One such comment noted that the agency had failed to list the amended version of two cheese standards (edam and gouda) in the proposed regulation, even though the preamble to the proposal clearly indicated that the agency intended to include these two standards among those being amended. Two other comments requested FDA to expand the proposal by permitting the use of antimycotics on swiss and emmentaler cheese and on swiss cheese for manufacturing. Elsewhere in this issue of the **Federal Register**, FDA is addressing all of these comments by proposing to amend the standards of identity for edam cheese (21 CFR 133.138) and, by cross-reference, gouda cheese (21 CFR 133.142), swiss and emmentaler cheese (21 CFR 133.195), and swiss cheese for manufacturing (21 CFR 133.196) to permit the use of antimycotics in the same manner as provided by the amendments set forth in this document.

One comment expressed concern about the expanded use of antimycotics. That comment stated that the public health might be affected by a regulation that permits the use of safe and suitable antimycotics without any qualitative and quantitative restrictions other than the restriction that the cumulative level of antimycotics not exceed current good manufacturing practices.

The agency does not believe that the concern expressed by the comment is warranted. The provision for "safe and suitable" ingredients governs the use of all optional ingredients in these cheeses, including antimycotics. Thus, any antimycotics used in or on these standardized cheeses must conform to the definition of "safe and suitable" in 21 CFR 130.3(d). That definition requires that the antimycotic: (1) Perform an appropriate function in the food; (2) be used at a level no higher than necessary to achieve its intended purpose; and (3) be generally recognized as safe (GRAS), prior sanctioned, or the subject of a food additive regulation. In light of these requirements, specific qualitative or quantitative restrictions on the use of antimycotics in these standardized cheeses is unnecessary. The agency also notes that label declaration is required for all optional ingredients, including antimycotics, so that consumers will have a means of avoiding these substances if they so choose.

The same comment raised the issues of economic impact related to health concerns and of environmental impact from increased use of antimycotics. As discussed in the previous paragraph, the agency does not believe that the "safe and suitable" use of antimycotics raises any health concerns and, accordingly, finds no basis for assuming there will be any increased costs as a result of health problems. The agency also notes that amendment of a food standard is categorically excluded from preparation of an environmental assessment (21 CFR 20.24(b)(1)).

Accordingly, after consideration of all comments, the agency is amending the standards of identity for brick cheese (§ 133.108), brick cheese for manufacturing (§ 133.109), washed curd and soaked curd cheese (§ 133.136), washed curd cheese for manufacturing (§ 133.137), granular and stirred curd cheese (§ 133.144), granular cheese for manufacturing (§ 133.145), monterey cheese and monterey jack cheese (§ 133.153), muenster and munster cheese (§ 133.160), muenster and munster cheese for manufacturing (§ 133.161), and, by cross-reference, high-moisture jack cheese (§ 133.154) to permit the use of safe and suitable antimycotics on the exterior of bulk cheeses during curing and aging, and on the exterior of those cheeses for manufacturing. The agency is also amending the standards of identity for brick cheese (§ 133.108), cook cheese, koch kaese (§ 133.127), cream cheese (§ 133.133), cream cheese with other foods (§ 133.134), washed curd and soaked curd cheese (§ 133.136), gammelost cheese (§ 133.140), gorgonzola cheese (§ 133.141), granular and stirred curd cheese (§ 133.144), grated cheeses (§ 133.146), monterey cheese and monterey jack cheese (§ 133.153), muenster and munster cheese (§ 133.60), neufchatel cheese (§ 133.162), nuworld cheese (§ 133.164), roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk (§ 133.184), sap sago cheese (§ 133.186), spiced cheeses (§ 133.190) and, by cross-reference, part-skim spiced cheeses (§ 133.191) to update the formats and language of these standards, as set forth below. The agency is also amending the standard of identity for blue cheese (§ 133.106) by removing paragraph (a)(2) which established a maximum phenol equivalent value when unpasteurized dairy ingredients are used in the manufacture of the cheese.

III. Economic Impact

In the preamble to the proposal (52 FR 35426), the impact of the proposed amendment on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96–354) (5 U.S.C. 601). No comments were received on the review presented. FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 133 is amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. The authority citation for 21 CFR Part 133 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61

§ 133.106 [Amended]

2. Section 133.106 *Blue cheese* is amended in paragraph (a)(1) by removing "(a)(3)" and replacing it with "(a)(2)," by removing paragraph (a)(2), and by redesignating existing paragraph (a)(3) as paragraph (a)(2).

3. Section 133.108 is revised to read as follows:

§ 133.108 Brick cheese.

(a) *Description.* (1) Brick cheese is the food prepared from dairy ingredients and other ingredients specified in this section by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 44 percent by weight, as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of brick cheese is not more than 5 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is brought to a temperature of about 88 °F and subjected to the action of a lactic acid-producing bacterial culutre. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into cubes with sides approximately ⅜ inch long, and stirred and heated so that the temperature rises slowly to about 96 °F. The stirring is continued until the curd is sufficiently firm. Part of the whey is then removed, and the mixture diluted with water or salt brine to control the acidity. The curd is transferred to forms, and drained. During drainage it is pressed and turned. After drainage the curd is salted, and the biological curing agents characteristic of brick cheese are applied to the surface. The cheese is then cured to develop the characteristics of brick cheese. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative level of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(c) *Nomenclature.* The name of the food is "brick cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropraite.

4. Section 133.109 is revised to read as follows:

§ 133.109 Brick cheese for manufacturing.

Brick cheese for manufacturing conforms to the definition and standard of identity for brick cheese prescribed by § 133.108, except that the dairy ingredients are not pasteurized and curing is not required.

5. Section 133.127 is revised to read as follows:

§ 133.127 Cook cheese, koch kaese.

(a) *Description.* (1) Cook cheese, koch kaese, is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The maximum moisture content is 60 percent by weight, as determined by the method described in § 133.5. The dairy ingredients used may be pasteurized.

(2) The phenol equivalent value of 0.25 gram of cook cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut, stirred, and heated with continued stirring, so as to separate the curd and whey. The whey is drained from the curd and the curd is cured for 2 or 3 days. It is then heated to a temperature of not less than 180 °F until the hot curd will drop from a ladle with a consistency like that of honey. The hot cheese is filled into packages and cooled. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Nonfat milk as defined in § 133.3.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(ii) Culture of white mold.

(iii) Pasteurized cream.

(iv) Caraway seed.

(v) Salt.

(c) *Nomenclature.* The name of the food is "cook cheese" or, alternatively, "koch kaese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

6. Section 133.133 is revised to read as follows:

§ 133.133 Cream cheese.

(a) *Description.* (1) Cream cheese is the soft, uncured cheese prepared by the procedure set forth in paragraph (a)(2) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 33 percent by weight of the finished food, and the maximum moisture content is 55 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be homogenized and is subjected to the action of lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to coagulate the dairy ingredients. The coagulated mass may be warmed and stirred and it is drained. The moisture content may be adjusted with one or more of the optional ingredients specified in paragraph (b)(3)(ii) of this section. The curd may be pressed, chilled, and worked and it may be heated until it becomes fluid. It may then be homogenized or otherwise mixed. One or more of the optional dairy ingredients specified in paragraph (b)(1) and the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Salt.

(ii) Cheese whey, concentrated cheese whey, dried cheese whey, or reconstituted cheese whey prepared by addition of water to concentrated cheese whey or dried cheese whey.

(iii) Stabilizers, in a total amount not to exceed 0.5 percent of the weight of the finished food, with or without the addition of dioctyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(c) *Nomenclature.* The name of the food is "cream cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial original may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

7. Section 133.134 is revised to read as follows:

§ 133.134 Cream cheese with other foods.

(a) *Description.* Cream cheese with other foods is the class of foods prepared by mixing, with or without the aid of heat, cream cheese with one or a mixture of two or more types of foods (except other cheeses) listed in paragraph (b)(1) of this section, in an amount sufficient to differentiate the mixture from cream cheese. One or more of the other optional ingredients in paragraph (b)(2) of this section may be used. The maximum moisture content of

the mixture is 60 percent by weight. The minimum milkfat is 33 percent by weight of the cream cheese and in no case less than 27 percent of the finished food. The moisture and fat contents will be determined by the methods described in § 133.5, except that the method for determination of fat content is not applicable when the added food contains fat.

(b) *Optional ingredients.* The following safe and suitable optional ingredients may be used:

(1) *Foods.* Properly prepared fresh, cooked, canned, or dried fruits or vegetables; cooked or canned meats, relishes, pickles, or other suitable foods.

(2) *Other optional ingredients.* (i) Stabilizers, in a total amount not to exceed 0.8 percent, with or without the addition of dioctyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(ii) Coloring.

(c) *Nomenclature.* The name of the food is "cream cheese with _____" or, alternatively, "cream cheese and _____", the blank being filled in with the name of the foods used in order of predominance by weight.

(d) *Labeling.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

8. Section 133.136 is revised to read as follows:

§ 133.136 Washed curd and soaked curd cheese.

(a) *Description.* (1) Washed curd, soaked curd cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 42 percent by weight, as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of washed curd cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed, treated with hydrogen peroxide/catalase, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. The whey is drained off, and the curd is matted into a cohesive mass. The mass is cut into slabs, which are so piled and handled as to promote the drainage of whey and the development of acidity. The slabs are then cut into pieces, cooled in water, and soaked therein until the whey is partly extracted and water is absorbed. The curd is drained, salted, stirred, and pressed into forms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Hydrogen peroxide, followed by a sufficient quantity of catalase preparation to eliminate the hydrogen peroxide. The weight of the hydrogen peroxide shall not exceed 0.05 percent of the weight of the dairy ingredients and the weight of the catalase shall not exeed 20 parts per million of the weight of dairy ingredients treated.

(c) *Nomenclature.* The name of the food is "washed curd cheese" or, alternatively, "soaked curd cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

9. Section 133.137 is revised to read as follows:

§ 133.137 Washed curd cheese for manufacturing.

Washed curd cheese for manufacturing conforms to the definition and standard of identity prescribed for washed curd cheese by § 133.136, except that the dairy ingredients are not pasteurized and curing is not required.

10. Section 133.140 is revised to read as follows:

§ 133.140 Gammelost cheese.

(a) *Description.* (1) Gammelost cheese is the food prepared from nonfat milk, as defined in § 133.3, by the procedure set forth in paragraph (a)(2) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The maximum moisture content is 52 percent by weight, as determined by the methods described in § 133.5.

(2) The dairy ingredients are subjected to the action of a lactic acid-producing bacterial culture. The development of acidity is continued until the dairy ingredients coagulate to a semisolid mass. The mass is stirred and heated until a temperature of about 145 °F is reached, and is held at that temperature for at least 30 minutes. The whey is drained off and the curd removed and placed in forms and pressed. The shaped curd is placed in whey and heated for 3 or 4 hours, and may again be pressed. It is then stored under conditions suitable for curing.

(b) *Nomenclature.* The name of the food is "gammelost cheese".

(c) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

11. Section 133.141 is revised to read as follows:

§ 133.141 Gorgonzola cheese.

(a) *Description.* (1) Gorgonzola cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of bluish-green mold, *Penicillium*

roquefortii, throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 42 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Gorgonzola cheese is at least 90 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of the mold *Penicillium roquefortii* are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, or corresponding products of goat origin, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Blue or green color in an amount to neutralize the natural yellow color of the curd.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Benzoyl peroxide, or a mixture of benzoyl peroxide with potassium alum, calcium sulfate, and magnesium carbonate used to bleach the dairy ingredients. The weight of the benzoyl peroxide is not more than 0.002 percent of the weight of the dairy ingredients being bleached, and the weight of the potassium alum, calcium sulfate, and magnesium carbonate, singly or combined, is not more than six times the weight of the benzoyl peroxide used. If the dairy ingredients are bleached in this manner, vitamin A is added to the curd in such quantity as to compensate for the vitamin A or its precursors destroyed in the bleaching process, and artificial coloring is not used.

(vi) Vegetable fats or oil which may be hydrogenated, used as a coating for the rind.

(c) *Nomenclature.* The name of the food is "gorgonzola cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate; "milkfat from goat's milk and nonfat goat's milk", etc.

Section 133.144 is revised to read as follows:

§ 133.144 Granular and stirred curd cheese.

(a) *Description.* (1) Granular cheese, stirred curd cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 39 percent by weight as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of granular cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed, treated with hydrogen peroxide/catalase, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. A part of the whey is drained off. The curd is then alternately stirred and drained to prevent matting and to remove whey from curd. The curd is then salted, stirred, drained, and pressed into forms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Hydrogen peroxide, followed by a sufficient quantity of catalase preparation to eliminate the hydrogen peroxide. The weight of the hydrogen peroxide shall not exceed 0.05 percent of the weight of the dairy ingredients and the weight of the catalase shall not exceed 20 parts per million of the weight of the dairy ingredients treated.

(c) *Nomenclature.* The name of the food is "granular cheese" or, alternatively, "stirred curd cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

13. Section 133.145 is revised to read as follows:

§ 133.145 Granular cheese for manufacturing.

Granular cheese for manufacturing conforms to the definition and standard of identity prescribed for granular cheese by § 133.144, except that the dairy ingredients are not pasteurized and curing is not required.

14. Section 133.146 is revised to read as follows:

§ 133.146 Grated cheeses.

(a) *Description.* Grated cheeses is the class of foods prepared by grinding, grating, shredding, or otherwise comminuting cheese of one variety or a mixture of two or more varieties. The cheese varieties that may be used are those for which there are definitions and standards of identity, except that cream cheese, neufchatel cheese, cottage cheese, creamed cottage cheese, cook cheese, and skim milk cheese for manufacturing may not be used. All cheese ingredients used are either made from pasteurized milk or held at a temperature of not less than 35 °F for at least 60 days. Moisture may be removed from the cheese ingredients in the manufacture of the finished food, but no moisture is added. One or more of the optional ingredients specified in paragraph (c) of this section may be used.

(b) *Composition.* (1) Each cheese ingredient used is present at a minimum level of 2 percent of the weight of the finished food.

(2) When one variety of cheese is used, the minimum milkfat content of the food is not more than 1 percent lower than the minimum prescribed by the standard of identity for that cheese.

(3) When two or more varieties of cheese are used, the minimum milkfat content is not more than 1 percent below the arithmetical average of the minimum fat content percentages prescribed by the standards of identity for the varieties of cheese used, and in no case is the milkfat content less than 31 percent.

(4) Milkfat and moisture contents are determined by the methods described in § 133.5.

(c) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Antimycotics.

(2) Anticaking agents.

(3) Spices.

(4) Flavorings other than those which, singly or in combination with other ingredients, simulate the flavor of cheese of any age or variety.

(d) *Nomenclature.* (1) The name of the food is "grated cheese" or "grated cheeses", as appropriate. The name of the food shall be accompanied by a declaration of the specific variety of cheese(s) used in the food and by a declaration indicating the presence of any added spice or flavoring.

(2) Any cheese varietal names used in the name of the food are those specified by applicable standards of identity, except that the designation "American cheese" may be used for cheddar, washed curd, colby, or granular cheese or for any mixture of these cheeses.

(3) The following terms may be used in place of the name of the food to describe specific types of grated cheese:

(i) If only one variety of cheese is used, the name of the food is "grated _____ cheese", the name of the cheese filling the blank.

(ii) If only parmesan and romano cheeses are used and each is present at a level of not less than 25 percent by weight of the finished food, the name of the food is "grated _____ and _____ cheese", the blanks being filled with the names "parmesan" and "romano" in order of predominance by weight. The name "reggiano" may be used for "parmesan".

(iii) If a mixture of cheese varieties (not including parmesan or romano) is used and each variety is present at a level of not less than 25 percent of the weight of the finished food, the name of the food is "grated _____ xx cheese", the blank being filled in with the names of the varieties in order of predominance by weight.

(iv) If a mixture of cheese varieties in which one or more varieties (not including parmesan or romano) are each present at a level of not less than 25 percent by weight of the finished food, and one or more other varieties (which may include parmesan and romano cheese) are each present at a level of not less than 2 percent but in the aggregate not more than 10 percent of the weight of the finished food, the name of the food is "grated _____ cheese with other grated cheese" or "grated _____ cheese with other grated cheeses", as appropriate, the blank being filled in with the name or names of those cheese varieties present at levels of not less than 25 percent by weight of the finished food in order of predominance, in letters not more than twice as high as the letters in the phrase "with other grated cheese(s)".

(4) The following terms may be used in place of "grated" to describe alternative forms of cheese:

(i) "Shredded", if the particles of cheese are in the form of cylinders, shreds, or strings."

(ii) "Chipped" or "chopped", if the particles of cheese are in the form of chips.

(e) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", "milkfat from goat's milk and nonfat goat's milk", "milkfat from sheep's milk and nonfat sheep's milk", etc., as appropriate.

15. Section 133.153 is revised to read as follows:

§ 133.153 Monterey cheese and monterey jack cheese.

(a) *Description.* (1) Monterey cheese, monterey jack cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids, and the maximum moisture content is 44 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) The phenol equivalent of 0.25 gram of monterey cheese is not more than 3 micrograms, as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. Part of the whey is drained off, and water or salt brine may be added. The curd is drained and placed in a muslin or sheeting cloth, formed into a ball, and pressed; or the curd is placed in a cheese hoop and pressed. Later, the cloth bandage is removed, and the cheese may be covered with a suitable coating. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(ii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iii) Salt.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Vegetable oil, with or without rice flour sprinkled on the surface, used as a coating for the rind.

(c) *Nomenclature.* The name of the food is "monterey cheese" or alternatively, "monterey jack cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes", and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

16. Section 133.160 is revised to read as follows:

§ 133.160 Muenster and munster cheese

(a) *Description.* (1) Muenster cheese, munster cheese, is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 46 percent by weight, as determined by the methods decribed in § 133.5. The diary ingredients used are pasteurized.

(2) The phenol equivalent of 0.25 gram of muenster cheese is not more than 3 micrograms, as determined by the methods described in § 133.5.

(3) One of more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a harmless lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mess. After coagulation the mass is divided into small portions, stirred, and heated, with or without dilution with water or salt brine, so as to promote and regulate the separation of whey and curd. The curd is transferred to forms permitting drainage of the whey. During drainage the curd may be pressed and turned. After drainage the curd is removed from the forms and is salted. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Vegetable oil, used as a coating for the rind.

(c) *Nomenclature.* The name of the food is "muenster cheese" or, alternatively, "munster cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

17. Section 133.161 is revised to read as follows:

§ 133.161 Muenster and munster cheese for manufacturing.

Muenster cheese for manufacturing conforms to the definition and standard of identity for muenster cheese prescribed by § 133.160, except that the dairy ingredients are not pasteurized.

18. Section 133.162 is revised to read as follows:

§ 133.162 Neufchatel cheese.

(a) *Description.* (1) Neufchatel cheese is the soft uncured cheese prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The milkfat content is not less than 20 percent but less than 33 percent by weight of the finished food and the maximum moisture content is 65 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is subjected to the action of a harmless lactic acid-producing bacterial culture, with or without one or more of the clotting enzymes specified in paragraph (b)(2) of this section. The mixture is held until the dairy ingredients coagulate. The coagulated mass may be warmed and stirred and it is drained. The moisture content may be adjusted with one of the optional ingredients in paragraph (b)(3)(ii) of this section. The curd may be pressed, chilled, worked, and heated until it becomes fluid. It may then be homogenized or otherwise mixed. One or more of the dairy ingredients specified in paragraph (b)(1) of this section or the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Salt.

(ii) Cheese whey, concentrated cheese whey, dried cheese whey, or reconstituted cheese whey prepared by addition of water to concentrated cheese whey or dried cheese whey.

(iii) Stabilizers, in a total amount not to exceed 0.5 percent of the weight of the finished food, with or without the addition of dioctyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(c) *Nomenclature.* The name of the food is "neufchatel cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

19. Section 133.164 is revised to read as follows:

§ 133.164 Nuworld cheese.

(a) *Description.* (1) Nuworld cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of creamy-white mold, a white mutant of *Penicillium roquefortii,* throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 46 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Nuworld cheese is at least 60 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of a white mutant of the mold *Penicillium roquefortii* are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Blue or green color in an amount to neutralize the natural yellow color of the curd.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(c) *Nomenclature.* The name of the food is "nuworld cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

20. Section 133.184 is revised to read as follows:

§ 133.184 Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk.

(a) *Description.* (1) Roquefort cheese, sheep's milk blue-mold cheese, blue-mold cheese from sheep's milk, is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of bluish-green mold, *Penicillium roquefortii,* throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 45 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Roquefort cheese is at least 60 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of the mold *Penicillium roquefortii* are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Operational ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Forms of milk, nonfat milk, or cream, as defined in § 133.3, of sheep origin, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(c) *Nomenclature.* The name of the food is "roquefort cheese", or alternatively, "sheep's milk blue-mold cheese" or "blue-mold cheese from sheep's milk.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat from sheep's milk and nonfat sheep's milk" or "nonfat sheep's milk and milkfat from sheep's milk", as appropriate.

21. Section 133.186 is revised to read as follows:

§ 133.186 Sap sago cheese.

(a) *Description.* (1) Sap sago cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The cheese is pale green in color and has the shape of a truncated cone. The maximum moisture content is 38 percent by weight, as determined by the method described in § 133.5. Sap sago cheese is not less than 5 months old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is allowed to become sour, and is heated to boiling

temperature, with stirring. Sufficient sour whey is added to precipitate the casein. The curd is removed, spread out in boxes, and pressed, and while under pressure is allowed to drain and ferment. It is ripened for not less than 5 weeks. The ripened curd is dried and ground; salt and dried clover of the species *Melilotus coerulea* are added. The mixture is shaped into truncated cones and ripened. The optional ingredient in paragraph (b)(2) of this section may be added during this procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Nonfat milk, as defined in § 133.3.

(2) *Other optional ingredients.* Buttermilk.

(c) *Nonmenclature.* The name of the food is "sap sago cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

22. Section 133.190 is revised to read as follows:

§ 133.190 Spiced cheeses.

(a) *Description.* (1) Spiced cheeses are cheeses for which specifically applicable definitions and standards of identity are not prescribed by other sections of this part. The food is prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids, as determined by the method described in § 133.5. The food contains spices, in a minimum amount of 0.015 ounce per pound of cheese, and may contain spice oils. If the dairy ingredients are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) The phenol equivalent of 0.25 gram of spiced cheese is not more than 3 micrograms, as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a harmless lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is divided into smaller portions and so handled by stirring, heating, and diluting with water or salt brine as to promote and regulate the separation of whey and curd. The whey is drained off. The curd is removed and may be further drained. The curd is then shaped into forms, and may be pressed. At some time during the procedure, spices are added so as to be evenly distributed throughout the finished cheese. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, or corresponding products of goat or sheep origin, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Salt.

(iv) Spice oils which do not, alone or in combination with other ingredients, simulate the flavor of cheese of any age or variety.

(v) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(vi) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages.

(c) *Nomenclature.* The name of the food is "spiced cheese". The following terms shall accompany the name of the food, as appropriate:

(1) The specific common or usual name of the spiced cheese, if any such name has become generally recognized; or

(2) An arbitrary or fanciful name that is not false or misleading in any particular.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", or "milkfat from goat's milk and nonfat goat's milk", etc., as appropriate.

Dated: July 24, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200 and 206

[Docket No. R-89-1415; FR-2481]

RIN 2501-AA67

Home Equity Conversion Mortgage Insurance; Corrections

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; corrections.

SUMMARY: The purpose of this document is to make technical corrections to a recently published final rule that implemented section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) which added a new section 255 to the National Housing Act (Act). Section 255 authorized the Secretary to carry out a program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes into cash.

FOR FURTHER INFORMATION CONTACT: Judith V. May, Office of Economic Affairs, Room 8218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 9, 1989 (54 FR 24822), the Department published a final rule that added a new part 206 to title 24, chapter II of the Code of Federal Regulations. Part 206 implemented section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242), which added a new section 255 to the National Housing Act (Act). Section 255 authorizes the Secretary to carry out a program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes to cash.

The purpose of this document is to make technical corrections and correct typographical errors to that final rule.

Three of the errors found in the rule would affect the substantive rights of borrowers, lenders, and HUD, if not changed before reverse mortgages begin to be insured. First, § 206.25(b)(1)(ii) did not include the reference to servicing charges that was included in the final