

milk in the Pacific Northwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Pacific Northwest order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Pacific Northwest order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make these amendments to the Pacific Northwest order effective July 1, 2004. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on April 5, 2004.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective July 1, 2004. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Section 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk that is marketed within the specified marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Pacific Northwest order is

the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the order amending the Pacific Northwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

Specifically, this final rule permanently adopts a "cooperative pool manufacturing plant" provision and continues system pooling for cooperative manufacturing plants. Additionally, this final rule permanently adopts a diversion limit of 80 percent of total producer receipts for a pool plant, continues the standard for the number of days during the month that the milk of a producer would need to be delivered to a pool plant in order for the rest of the milk of that producer to be eligible to be diverted to nonpool plants, and maintains the authority granted to the market administrator to adjust the touch-base standard.

#### List of Subjects in 7 CFR Part 1124

Milk marketing orders.

#### Order Relative to Handling

■ *It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

#### PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

■ The interim final rule amending 7 CFR part 1124 which was published at 67 FR 69668 on November 19, 2002, is adopted as a final rule without change.

Dated: June 16, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-14061 Filed 6-22-04; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### 8 CFR Part 274a

#### Seizure and Forfeiture of Conveyances

*CFR Correction*

■ In Title 8 of the Code of Federal Regulations, revised as of Jan. 1, 2004, on page 656, § 274a.12 is corrected in paragraph (c)(5) by removing text

beginning with "Ill(6)" to the end of the paragraph.

[FR Doc. 04-55513 Filed 6-22-04; 8:45 am]

BILLING CODE 1505-01-D

#### DEPARTMENT OF JUSTICE

#### Executive Office for Immigration Review

#### 8 CFR Part 1274a

#### Control of Employment of Aliens

*CFR Correction*

In Title 8 of the Code of Federal Regulations, revised as of Jan. 1, 2004, on page 1094, § 1274a.12 is corrected in paragraph (c)(5) by removing text beginning with "Ill(6)" to the end of the paragraph.

[FR Doc. 04-55514 Filed 6-22-04; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

#### Food Safety and Inspection Service

#### 9 CFR Part 319

[Docket No. 96-006F]

RIN 0583-AC09

#### Beef or Pork with Barbecue Sauce; Revision of Standard

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending its regulations by removing meat yield requirements in the standard of identity for "Beef with Barbecue Sauce" and "Pork with Barbecue Sauce." This action is in response to a petition. The petitioner states that the current food standard, promulgated in 1952, places producers of these products at a competitive disadvantage because producers of other meat and sauce products do not have a cooked meat yield requirement or a raw meat yield requirement. This action provides consistent requirements for most meat with sauce producers.

**EFFECTIVE DATE:** This rule is effective July 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, 1400 Independence Avenue, SW., Cotton Annex, Washington, DC 20250-3700, (202) 205-0279.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 319.312 of FSIS regulations requires that the products labeled as "Beef with Barbecue Sauce" and "Pork with Barbecue Sauce" contain a minimum of 50 percent cooked meat of the species identified on the label, that the cooked meat be reduced by cooking to no more than 70 percent of the weight of the uncooked meat, and if uncooked meat is used to produce the product, the product contain at least 72 percent meat computed on the weight of the uncooked meat.

Some standards of identity have been promulgated with meat yield requirements, e.g., "Hash" (§ 319.302), "Corned Beef Hash" (§ 319.303) and "Beef or Pork with Barbecue Sauce" (§ 319.312). Other meat and sauce products, such as "Meat Stews" (§ 319.304), "Beans with Frankfurters in Sauce, Sauerkraut with Wieners and Juice, and similar products" (§ 319.309), and "Beef with Gravy and Gravy with Beef" (§ 319.313), have minimum meat content requirements but do not require specific cooked or uncooked meat yields. There is no yield requirement for these mentioned products because the meat component used to make these latter products is typically pre-cooked and not cooked in the sauce.

FSIS was petitioned by the American Meat Institute to amend FSIS' regulations by removing a cooked meat yield requirement and a raw meat yield requirement for the food standards "Beef with Barbecue Sauce" and "Pork with Barbecue Sauce." The petitioner stated that the food standard, promulgated in 1952, does not reflect the conditions of commercial marketability of beef or pork with barbecue sauce, and that given today's cooking methods and leaner meat cuts, a beef or pork item can be fully cooked at yields well above 70 percent. Further, these obsolete requirements place producers of these products at a competitive disadvantage with respect to manufacturers of similar products, such as "Beef with Gravy", who do not have such requirements.

FSIS agrees with the petitioner's assertion that the subject standard of identity does not reflect the current conditions of commercial marketability of beef or pork with barbecue sauce. FSIS believes consumers are best served by promoting consistent standards among similar types of meat and poultry with sauce products. In this way, consumers can be assured that the same types of rules are applied to protect them from deceptive products so that they receive products with the essential

components and the characteristics they expect.

Therefore, on September 3, 1997 (62 FR 46450), FSIS proposed to revise 9 CFR part 319 by removing the meat yield requirements for the beef and pork with barbecue sauce food standards. FSIS had not acted to remove the meat yield requirements sooner because of other, higher-priority regulatory initiatives.

In response to the proposed rule, FSIS received 7 comments. After carefully analyzing the comments, FSIS has decided to adopt the proposed rule.

## Comments and Responses

FSIS received 7 comments from trade and professional organizations and food companies. Five commenters supported the revision and two opposed it. FSIS responses to the comments follow.

*Comment:* One commenter stated that 9 CFR 319.312 is outdated and does not accurately reflect cooking yields resulting from today's advanced cooking methods. This commenter also stated that a revision of the standard will encourage broader competition and will result in a wider variety of products of this type in the marketplace.

*Response:* FSIS agrees with this position. Revision of the regulation should promote the development of new and innovative products.

*Comment:* Three commenters expressed the opinion that the rule should be expanded to include other competitive products that require maximum cooking yields as part of the product's standards.

*Response:* FSIS does not agree with this comment. An expansion of this proposal to include other competitive products would not be within the scope of this rulemaking.

*Comment:* One commenter stated that FSIS should consider the potential impact of this rulemaking on manufacturers of standardized poultry products.

*Response:* This rulemaking will achieve consistency between the meat and poultry standards of identity in the regulations. The poultry standards do not include yield requirements.

*Comment:* Three commenters stated that this rulemaking would provide consistency with requirements for other meat with sauce products.

*Response:* FSIS agrees with this statement. The revision will eliminate the requirement for specific cooked meat yields for these two products and result in a standard that is consistent with requirements for other similar meat and poultry with sauce-type standardized products, e.g., beef with gravy. Consumers can be assured that

the same types of rules apply to protect them from deceptive meat and poultry sauce-type products so that they receive products with the essential characteristics they expect.

*Comment:* Two commenters who produce beef and pork with barbecue sauce were opposed to the revision of the regulation. They stated that such a revision would result in an economic hardship for their food companies given the large investments in equipment that they have made to facilitate manufacture of their product lines. These two commenters stated that the proposed revision would result in products containing less protein and more moisture and fat, resulting in economic adulteration.

*Response:* FSIS does not believe that an economic hardship would result from the proposed revision of the regulation. As explained in the section on the benefits of this final rule below, manufacturers will not need to purchase new equipment. They will modify their yield by altering cooking times and temperatures. FSIS also disagrees with the commenters' position that products containing less protein and more fat and moisture automatically constitute economic adulteration. Consumers can rely on the nutrition facts and ingredients statement that are required on the labels of meat and poultry products to be informed of the protein, fat, and other constituents of the products they purchase. They can use this information to make comparisons between products they wish to purchase.

## Executive Order 12866: Benefit-Cost Analysis

This rule has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

## Need for the Rule

The current standard, 9 CFR 319.312, requires that products labeled as "Beef with Barbecue Sauce" and "Pork with Barbecue Sauce" must contain a minimum of 50 percent cooked meat of the species identified on the label, that the cooked meat must be reduced by cooking to no more than 70 percent of the weight of the uncooked meat, and that if uncooked meat is used to produce the product, the product must contain at least 72 percent meat computed on the weight of the uncooked meat. This final rule will provide consistency among meat and sauce food standards by removing the meat yield requirements for the food standard "Beef with Barbecue Sauce"

and "Pork with Barbecue Sauce". It will leave unchanged the minimum meat content requirement. Removal of the meat yield requirement will bring this food standard in line with other food standards for other meat and sauce products.

#### Description of Affected Product

The standard for beef with barbecue sauce and pork with barbecue sauce requires the product be cooked and have not less than 50 percent beef or pork. Usually the beef or pork meat used in this product is derived from larger cuts of beef or pork. Mechanically separated pork may be used in accordance with 9 CFR 319.6 (FSIS has determined that mechanically separated beef is inedible and has prohibited its use for human food). Beef or pork with barbecue sauce is marketed in supermarkets and merchandise discount stores as either frozen or canned.

#### Description of Affected Industry

The industry is comprised of several hundred manufacturers who either conduct beef or pork slaughter and processing operations or only processing operations. Typically, these firms produce a broad range of processed products using beef, pork, or other meats. The majority of the manufacturers of beef with barbecue sauce or pork with barbecue sauce are located in the southeastern region of the United States and are considered small entities because they employ fewer than 500 employees.<sup>1</sup>

#### Benefits

The final rule will modernize the food standard for beef with barbecue sauce and pork with barbecue sauce to provide consistency with other meat and sauce food standards. Second, it will reflect the improvements in technology and the marketing of beef with barbecue sauce and pork with barbecue sauce products. Third, it will potentially reduce manufacturers highest component (meat) cost in producing beef or pork with barbecue sauce, and, therefore, it will result in savings that can be passed along to consumers through lower prices. Fourth, it will permit manufacturers to produce meat products with 70 percent or greater yield without requiring the purchase of new injection equipment.

Deleting the yield requirement in the food standard for beef or pork with barbecue sauce will allow manufacturers of these products to

compete on an equitable basis with manufacturers who produce other meat with sauce products, because food standards for other meat with sauce products do not include a cooking yield requirement.

Current injection and tumbling technology permits manufacturers to produce cooked meat that will exceed 70 percent yield of the uncooked meat. The Agency believes that the current standard for beef or pork with barbecue sauce is outdated and does not reflect modern processing practices.<sup>2</sup>

The current practice is to supply meat products with high cook yields. Because of the technology that produces pumped meat, manufacturers can now supply cuts of meat that are moist and tender, which consumers have grown to expect. When the current standard was promulgated in 1952, the vacuum tumbling technology did not exist, and therefore the resulting pumped products were not available to consumers. Consumer expectations and preferences have evolved since the introduction of the vacuum tumbling technology. This final rule will permit manufacturers to supply pumped beef with barbecue sauce and pumped pork with barbecue sauce, meeting consumers' demands and preferences for pumped products.

This final rule also will permit manufacturers to increase their least costly component (barbecue sauce), while reducing their highest cost component (the cooked meat portion). For example, a manufacturer processes 100 pounds of beef and cooks it to a yield of 70% (per the existing regulations) to 70 pounds. The manufacturer is then allowed to make a maximum of 140 pounds of beef with barbecue sauce in order to meet the requirement for a 50% minimum of cooked meat content. Under this final rule, the manufacturer is allowed to cook the same 100 pounds of beef until it yields 75%. The manufacturer is then allowed to make a maximum of 150 pounds of beef with barbecue sauce. Thus the additional 10 pounds of beef with barbecue sauce is made up of an extra 5 pounds of the least costly component of the product, barbecue sauce.<sup>3</sup> Because of the lower cost of production to process these products, manufacturers can pass these cost savings to consumers in the form of lower prices.

<sup>2</sup> This standard was adopted in the 1950's. 51 FR 32058 (September 9, 1986).

<sup>3</sup> Example is a simplified view of the final rule. Example does not take into consideration small amount of other ingredients and components that can be added to the beef or pork with barbecue sauce.

Manufacturers may continue to produce products of beef with barbecue sauce and pork with barbecue sauce with 70 percent or greater yield without purchasing new injection equipment by (1) shortening the present cooking time, and (2) changing the cooking temperature so that fewer of the juices are cooked out of the meat and, therefore, the meat will reach a higher yield. By not requiring a cook yield, the final rule will open new markets for manufacturers in which they may produce products that exceed the current cook yield requirement.

#### Costs

The final rule should not impose any new cost burden on manufacturers of beef with barbecue sauce and pork with barbecue sauce because these manufacturers are producing other products that meet the no meat yield requirement for cooked meat. All manufacturers who cook these products to meet the existing 70 percent yield requirement and those manufacturers who exceed the yield requirement will be in compliance.

#### Regulatory Flexibility Analysis

FSIS has examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601-612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would lessen the economic effect of the rule on small entities. The agency has determined that the final rule will not have a significant impact on a substantial number of small entities.

Since the majority of the industry is comprised of small entities, and the final rule does not impose additional cost, these small entities will not suffer a significant adverse impact on their business operations and profits.

Small entities that are offering beef with barbecue sauce and pork with barbecue sauce products that do not exceed the 70 percent meat yield requirement when cooked will not be put at a disadvantage by the final rule. These small entities can continue to produce meat products that meet the 70 percent yield content.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court

<sup>1</sup> The exact number of firms that process beef or pork with barbecue sauce is unavailable and indeterminate.

challenging this rule. However, the administrative procedures specified in 9 CFR 390.7 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to a denial of access of information.

#### Paperwork Requirements

There are no paperwork or recordkeeping requirements associated with this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this final rule, FSIS will announce it on-line through the FSIS Web page located at <http://www.fsis.usda.gov>.

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at <http://www.regulations.gov>.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

#### List of Subjects in 9 CFR Part 319

Meat inspection, Standards of identity or composition.

■ For the reasons set forth in the preamble, 9 CFR part 319 is amended to read as follows:

#### PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

■ 1. The authority citation for part 319 is revised as follows:

**Authority:** 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Section 319.312 is revised to read as follows:

#### § 319.312 Pork with barbecue sauce and beef with barbecue sauce.

“Pork with Barbecue Sauce” and “Beef with Barbecue Sauce” shall consist of not less than 50 percent cooked meat of the species specified on the label. Mechanically Separated (Pork) may be used in accordance with § 319.6.

Done at Washington, DC, on: June 18, 2004.

**Barbara J. Masters,**  
Administrator.

[FR Doc. 04–14194 Filed 6–22–04; 8:45 am]

**BILLING CODE 3410-DM-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2004–18012; Airspace Docket No. 04–ACE–41]

#### Modification of Class E Airspace; Chadron, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace areas at Chadron, NE. A review of the Class E airspace surface area and the Class E airspace area extending upward from 700 feet above ground level (AGL) at Chadron, NE reveals the Class E airspace surface area does not comply with criteria for extensions and neither area complies with criteria for diverse departures. Also, the Class E airspace area extending upward from 700 feet AGL does not reflect the current Chadron Municipal Airport airport reference point (ARO). These airspace areas are enlarged and modified to conform to the criteria in FAA Orders.

**DATES:** This direct final rule is effective on 0901 UTC, September 30, 2004. Comments for inclusion in the Rules Docket must be received on or before July 29, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18012/ Airspace Docket No. 04–ACE–41, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Class E surface area and the Class E airspace area extending upward from 700 feet AGL at Chadron, NE. An examination of controlled airspace for Chadron, NE revealed that neither airspace area is in compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. The extension to the Class E surface area is redefined relative to the Whitney nondirectional radio beacon and the area is enlarged from a 4.2 to a 5.7-mile radius of Chadron Municipal Airport. The Class E airspace area extending upward from 700 feet AGL is increased from a 7.4 to a 10.7-mile radius of Chadron Municipal Airport in order to provide required airspace for diverse departures. The Chadron Municipal Airport ARP is corrected in the legal description. These modifications bring the legal descriptions of the Chadron, NW Class E airspace areas into compliance with FAA Orders 7400.2E and 8260.19C. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in