UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE

Petition for Rulemaking to Modify
the Standards of Identity
for Ground Beef, Hot Dogs,
and Sausages

Docket No. _____

Submitted by the

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

November 16, 2004

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CITIZEN PETITION

On behalf of the Center for Science in the Public Interest (CSPI) and its co-petitioners[1] we submit this petition, pursuant to Section 4(d) of the Administrative Procedures Act, 5 U.S.C. §553(e), and Sections 1(n)(7), 7, and 21 of the Federal Meat Inspection Act (FMIA), 9 U.S.C. §§601(n)(7), 607(c)(2), and 621, and 7 C.F.R. §1.28, requesting that the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) modify its regulations that establish Standards of Identity (SOIs) for chopped beef, ground beef, hamburgers, beef patties, fresh pork sausages, breakfast sausages, frankfurters, cheesefurters and similar products to lower the maximum fat content of those products. Such action would decrease consumers' consumption of saturated fat and their risk of heart disease.[2]

I. Action Requested

We request that FSIS revise the following regulations:

- 9 CFR §319.15 (a), (b), and (c), to lower the allowable fat content of raw meat products, including chopped beef, ground beef, hamburgers, and beef patties ("ground beef"[3]) from 30% to 20%.

[1] CSPI is a non-profit consumer advocacy and education organization that focuses primarily on food safety and nutrition issues and is supported principally by the 850,000 subscribers to its *Nutrition Action HealthLetter*. The co-petitioners are listed in Appendix A.

[2] Since much of the fat in meat is saturated, reducing the total fat level lowers the saturated fat level. *See* American Heart Association, *Fat*, available online at http://www.americanheart.org/presenter.jhtml?identifier=4582.

[3] The term "ground beef" is used in this petition as a blanket term for chopped meat, ground beef, hamburgers, and beef patties solely to simplify the discussion that follows. We acknowledge that the regulatory definitions of hamburger and ground beef and the production practices that result in these products differ. Ground and chopped beef only use fat trimmings of one kind of fat percentage to achieve the desired quantity of fat. Hamburger and beef

- 9 CFR §§319.180 and 319.181, to lower the fat content of hot dogs, frankfurters, franks, furters, hot-dogs, wieners, viennas, bologna, garlic bologna, knockwurst and similar products ("hot dogs"[4]) from 30% fat to 28% fat in the first year after the revision becomes final, to 26% in the second year, to 24% in the third year, to 22% in the fourth year, and to 20% in the fifth year. USDA may choose to accelerate the fat reduction, which would better protect the public's health.

- 9 CFR §§319.141 and 319.143, to lower the allowable fat content of fresh pork sausages and breakfast sausages ("sausages"[5]) from 50% to 45% in the first year after the revision becomes final, to 40% in the second year, to 35% in the third year, to 30% in the fourth year, and to 25% in the fifth year. USDA may choose to accelerate the fat reduction, which would better protect the public's health.

We have suggested a phase-in period for the revised SOIs for hot dogs and sausages to provide industry with sufficient time to adapt its production methods to reduce the fat in those products. A five-year time-frame should be more than sufficient. By contrast, we do not recommend a phase-in for ground beef because of the current widespread availability of lower-fat ground beef.

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patties can include blended trimmings of various fat percentages. Trimmings are the fat that is cut off of meat carcasses, which also includes some muscle meat. *See* 9 C.F.R. §§319 and 319.15 (a), (b), and (c). The 30% limit on fat was specified in 35 Fed. Reg. 15552-3 (Oct. 3, 1970) and said to have been in place for "about 40 years."

[4] The term "hot dog" is used in this petition as a blanket term for hot dogs, frankfurters, franks, furters, hot-dogs, wieners, viennas, bologna, garlic bologna, knockwurst and similar cooked sausages, cheesefurters, and similar products solely to simplify the discussion that follows. The flavor, formulation, and recipes of those products may differ. *See* 9 CFR §§319.180 and 319.181.

[5] The term "sausage" is used in this petition to refer to fresh pork sausage and breakfast sausage solely to simplify the discussion that follows. The regulatory definitions and the compositions of sausages differ. Breakfast sausages may include binders, fillers, and meat by-products; these ingredients are not allowed in pork sausages. However, a breakfast sausage that does not include binders and meat-by-products could be called "pork sausage" and any pork sausage could be called "breakfast sausage." Thus, the two products are somewhat interchangeable. Telephone interview with Katherine Butak, Labeling Consumer Protection Staff, FSIS (March 23, 2004). *See also* 9 C.F.R. §§319.141, 319.143, and 424.21. The 50% fat limit on fat was specified in 35 Fed. Reg. 15597 (Oct. 3, 1970)

Other types of sausage besides pork and breakfast sausages are not addressed in this petition, including fresh beef sausage (9 CFR §319.142 – standard allows 30% fat), whole hog sausage (9 C.F.R. §319.144 – standard allows 50% fat), Italian sausage (9 CFR §319.145 – standard allows 35% fat), and smoked pork sausage (9 C.F.R. §319.60 – standard allows 50% fat). Though this petition does not specifically address lowering the fat content of those other sausages, FSIS should consider similar action on those products as well.

CSPI also urges FSIS immediately to develop programs to encourage meat processors to expand their production of lower-fat ground beef, hot dogs, and sausages and for restaurants to serve lower-fat meat products.

II. Statement of Factual Grounds

A. Ground beef, hot dogs, and sausages comprise a significant part of the American diet.

Ground beef, hot dogs, and sausages are popular foods consumed at homes, in restaurants, at convenience stores, fairs, ballparks and other venues. The following statistics demonstrate their popularity:

Ground Beef:

- According to USDA, in 1994-96, 54% of all Americans ate ground beef at a meal at least once in a two-day period.[6]

- The per-capita consumption of ground beef purchased at retail was estimated to be 28.2 pounds in 2003,[7] equivalent to approximately 8.2 billion pounds in total.

- In 2001, 8.2 billion hamburgers and cheeseburgers were served in restaurants.[8] Nearly half of all restaurant sandwiches are burgers.[9] Assuming that another 10% more ground beef is served in restaurants in the form of spaghetti sauce, lasagna, and other dishes, the total quantity served in restaurants is equivalent to approximately 2.3 billion pounds of ground beef.[10]

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[6] Helen Smiciklas-Wright, et al., *Foods Commonly Eaten in the United States: Quantities Consumed Per Eating Occasion and in a Day, 1994-96*, U.S. Department of Agriculture NFS Report No. 96-5, 69 (January 2002), available online at http://www.barc.usda.gov/bhnrc/foodsurvey/pdf/Portion.pdf.

[7] American Meat Institute calculation using data from Cattle-Fax, *Average Annual per Capita Consumption, Beef Cuts and Ground Beef*, 2003. E-mail from Sara J. Goodwin, M.S**.,** Director, Consumer Public Relations, National Cattlemen's Beef Association, June 25, 2004. Other data sources show other levels of consumption. According to another publication of the National Cattlemen's Beef Association, in 2001, half of the beef purchased in supermarkets and other grocery stores was ground beef, totaling 5.7 billion pounds. *See* National Cattlemen's Beef Association, *Beef Bytes* (2002) at 9, available online at http://www.beef.org/documents/Beef%20Bytes%20Eating%20Beef.pdf.

[8] *Id*.

[9] National Cattlemen's Beef Association, *supra* note 7 at 13.

[10] Calculations based on assumption that hamburgers and cheeseburgers are a quarter-pound each. The 2.3 billion pounds of ground beef includes some imported beef. Responding to a shrinking domestic supply of lean beef

Hot Dogs:

- Americans consumed more than 20 billion hot dogs in 2002, roughly equivalent to 2.2 billion pounds, and, on average, about 70 per person.[11]

- Of the hot dogs consumed in 2002, 9 billion were purchased in retail stores.[12]

- Supermarket sales of hot dogs totaled $1.8 billion in 2003.[13]

Sausages:

- In 2002, Americans ate sausages at breakfast at home an average of 10 times per year.[14]

- Americans consumed approximately 3.2 billion pounds of sausage in 2002.[15]

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trimmings, quick-service restaurants like McDonald's are importing those trimmings and blending them with fattier domestic trimmings. Wes Ishmael, *What Now GROUND COW?*, Beef Magazine (April 1, 2003), available on-line at http://beef-mag.com/ar/beef_ground_cow/. Adding together the total ground beef sold at retail (8.2 billion pounds as reported by the American Meat Institute, *supra* note 7), the quantity CSPI estimates is sold in restaurants (2.3 billion as reported by the National Cattlemen's Beef Association, *supra* note 7), and accounting for 20% food waste yields a total of approximately 8.4 billion pounds of ground beef consumed by Americans each year.

[11] National Hot Dog and Sausage Council, *Vital Hot Dog Statistics*, available online at http://www.hot-dog.org/hd_vitalstats.htm. Accounting for 20% food waste lowers the total pounds consumed to 1.8 billion. The data reported by the National Hot Dog and Sausage Council has many inconsistencies, thus hot dog consumption might be higher or lower than the figures provided. The National Hot Dog and Sausage Council failed to respond to CSPI requests for clarification of the data problems. (E-mail request from Robbin Marks to Ayoka Bladford, Hot Dog Council, American Meat Institute, June 11, 2004). Extrapolation of the USDA 2-day survey of foods consumed indicates the consumption of 3.2 billion pounds of hot dogs and luncheon meat per year, based on 1994-1996 data. If 75% of that total is hot dogs and bologna, the total consumption of hot dogs and bologna would have been 2.4 billion pounds. *See* Helen Smiciklas-Wright *supra* note 6 at 173.

[12] *Id.*

[13] National Hot Dog and Sausage Council, *The Size and Scope of the U.S. Market for Hot Dogs 2003*, available online at http://www.hot-dog.org/facts/hd_market.htm.

[14] NPD Group, Inc., *NPDFoodworld Reports the 1950's-Style Breakfast of Eggs and Sausage is Back*, Press Release (September 25, 2002), available online at http://www.npd.com/press/releases/press _020925.htm.

[15] This figure is an estimate based on the data in Paul A. Cotton et al., *Dietary Sources of Nutrients among US Adults, 1994 to 1996*, 104 Journal of the American Dietetic Association 921 (2004), that showed that sausage contributes nearly three times the quantity of total and saturated fat as hot dogs. Since the average content of total and saturated fat of those products is similar, it may be assumed that Cotton et al.'s data shows that Americans consume three times the quantity of hot dogs or 6.7 billion pounds (extrapolation of National Hot Dog and Sausage Council hot dog data for 2002), including sausage in food mixtures. However, CSPI estimated that 40% of that 6.7 billion pounds is turkey, Italian, beef and other non-pork sausages, and 20% of the total pounds is food waste, thus an approximate 3.2 billion pounds of pork sausage was consumed in 2002. The National Hot Dog and Sausage Council provides no data on total sausage consumption. Further information on the data sets in the Cotton paper was provided in telephone conversations with Amy Subar, National Cancer Institute, U.S. National Institutes of

B. Lower-income consumers often consume the highest-fat ground beef.

Lower-income households are offered, and purchase, more lower-quality meat than do higher-income households.[16] Indeed, high-fat ground beef is the only ground beef available in some neighborhood stores in low-income neighborhoods. Recently, CSPI and the Food Trust of Philadelphia conducted market surveys to determine where high-fat ground beef is sold.[17] [18] The results of those surveys indicate that high-fat ground beef is more readily available in lower-income neighborhoods.

C. Restaurant patrons consume large quantities of high-fat ground beef.

A significant amount of ground beef purchased in the U.S. is high in fat (composed of more than 20% fat)[19] and served in restaurants. Major table-service restaurant chains, including Denny's, Ruby Tuesday's, and Bob Evans, sell hamburgers made from ground beef that is 24-

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Health (Aug. 4, 2004) and Annetta Cook, Agricultural Research Service, U.S. Department of Agriculture (Aug. 25, 2004), both of whom co-authored the Cotton analysis.

[16] *See, e.g.*, Ephraim S. Leibtag and Phil R. Kaufman, *Exploring Food Purchase Behavior of Low-Income Households: How Do They Economize?* Current Issues in Economics of Food Markets, Economic Research Service, U.S. Department of Agriculture, Agriculture Information Bulletin No. 747, 6 (2003) and Adam Drewnowski, et al., *Poverty and Obesity: the Role of Energy Density and Energy Costs*, 79 American Journal of Clinical Nutrition 6 (2004).

[17] CSPI, *Survey of Safeway Supermarkets and Small Grocery Stores*, Washington, D.C. (February-March 2004).

[18] Food Trust, *Survey of Supermarkets and Small Meat Markets*, Philadelphia, PA (May-June 2004).

[19] Seventy-five percent of the ground beef purchased is 11-20% fat, so 25% is higher or lower in fat. *See* National Cattlemen's Beef Association, *The U.S. Beef Industry: Demand, Spending, and Consumption* (2001), available online at http://www.beef.org/dsp/dsp_content.cfm?locationId=710&contentTypeId=1&contentId=249&print=1. In 2003, the 15 largest beef packers reported that of the 662 million pounds of ground beef they sold through one type of contract, 203 million pounds were composed of more than 25% fat. However, these figures vastly underestimate the total ground beef produced by the companies themselves. In 2003, close to 265 million pounds of ground beef were sold and produced by the companies through other types of contracts (but the fat content was unknown). These entities also sold about 1 billion pounds of trimmings (which ended up being ground by other processors to create ground beef of varying fat percentages). Data from U.S. Department of Agriculture, *Mandatory Boxed Beef Sales Reporting for Largest Packers,* Agricultural Marketing Service, January 17, 2004, U.S. Department of Agriculture, *Wholesale Meat Quotations for 2003, Boneless Processing Beef and Beef Trimmings, National/Regional*, Agricultural Marketing Service, 2004, and telephone interviews with Kirk Christie and Jodie Pitcock, Boxed Beef Reporters, USDA Market News, Agricultural Marketing Service, U.S. Department of Agriculture, Des Moines, Iowa (June 17, 2004).

26% fat.[20] Among fast-food restaurants, McDonald's ground beef is more than 20% fat.[21] As a result, some of the same consumers who choose to purchase lower-fat ground beef in supermarkets may be unaware that burgers or other foods they consume in restaurants are made from much higher-fat ground beef.

D. The most widely available versions of hot dogs and sausages are high in fat.

For hot dogs sold at supermarkets and grocery stores, the most prevalent fat level is close to the 30% fat limit in the existing SOI. The standard hot dogs produced by Oscar Mayer, Ball Park, Bar-S, and Hebrew National (four of the five top hot dog brands)[22] all contain 28% fat or more.[23]

The current SOI allows a much higher fat level for raw sausages (50% fat) and many brands sell products close to the allowable limit. Smithfield pork sausages are 48% fat,[24] while

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[20]CSPI, Survey of fat content of raw ground beef in hamburgers by selected restaurant chains (January-February 2004). *See* Table 1.

[21]As of February 3, 2003, McDonald's website (http://www.mcdonalds.com) stated that the raw fat content of its ground beef was 22.5%. This data is no longer provided on the company website. No current data on the fat content can be confirmed, because McDonald's corporate headquarters never responded to CSPI's verbal inquiry, May 21, 2004, and its response to CSPI's written inquiry (September 1, 2004) did not indicate the fat content of the raw ground beef. Similarly, CSPI attempted to confirm second-hand information that Burger King's hamburger meat was 28% fat. However, a Burger King representative said that the fat content of Burger King's raw meat could not be provided. Telephone interview with Blake Lewis, Burger King Corporate Headquarters, Miami, FL (May 25, 2004). CSPI also wrote to Burger King requesting this information, but the company's response (August 30, 2004) did not provide the percentage of fat in the raw ground beef.

[22] The other top brand is the "private label" (store) brand. Based on dollar sales in the year 2000, the top five brands of hot dog are: Oscar Mayer (with $258 million ($198 million for regular and $57 million for bun-length hot dogs)), Ball Park ($251 million), private label (store brand) ($110 million), Bar-S ($89 million) and Hebrew National ($49.6 million). National Hot Dog and Sausage Council, *America's Top Ten Favorite Hot Dog Brands,* available online at http://www.hot-dog.org/facts/TopTenHDBrands.htm.

[23] *See* Table 2.

[24] The nutrition label for raw sausage provides nutrient-content information per serving of cooked product. In general, a typical raw pork sausage loses 4-5 percentage points of fat when it is cooked. Bethany Showell, Nutritionist, Agricultural Research Service, U.S. Department of Agriculture, provided data demonstrating a loss of 4 percentage points during cooking for a "typical" pork sausage. Telephone interview with Bethany Showell, ARS (April 16, 2004). Bonnie King, Consumer Affairs Office of Smithfield/Gwaltney said that Smithfield's fresh pork

Farmland and Briggs pork sausages have a fat content of 43%-49%.[25] As is the case with higher-fat ground beef, breakfast sausages are more commonly consumed by lower-income families.[26]

E. Ground beef, hot dogs, and sausages are significant contributors to total fat and saturated fat consumption in the American diet.

In 1989-1991, among American adults, ground beef contributed 6.6% of the total fat and 7.4% of the saturated fat, more total fat than milk (5.9%), and more saturated fat than baked goods (5%).[27] Beef as a "unit" - including ground beef and beef cuts - was the largest contributor of fat to the American adult diet in 1994-1996 - above salad dressing and mayonnaise (number two), oils (number three), and cheese (number four).[28] Beef was also the number-two source of saturated fat (behind cheese, but ahead of milk, oils, and ice cream/sherbet/frozen yogurt in that order). Hot dogs contributed 1% of the total fat and saturated fat in the American adult diet, while sausages contributed 2.8% of the total fat in the American adult diet and 3.1% of the saturated fat.[29] Such percentages may seem moderate on an individual basis, but to achieve cumulative reductions in overall consumption of saturated fat (and calories), it is important to obtain reductions in all significant sources.

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sausage had a fat loss of 5 percentage points when cooked. Telephone interview with Bonnie King, Smithfield (June 10, 2004).

[25] The raw fat content is estimated using a fat loss figure of 4-5 percentage points. *See* Table 2 for a list of the fat content of various brands of sausage.

[26] National Hot Dog and Sausage Council, *The Size and Scope of the U.S. Market for Sausage 2003*, available online at http://www.hot-dog.org/sausage/sausage_market.htm.

[27] Amy F. Subar et al., *Dietary Sources of Nutrients Among U.S. Adults, 1989 - 1991*, 98 Journal of the American Dietetic Association 537 (1998), and telephone interview with Amy Subar, National Cancer Institute, National Institutes of Health, by Margo Wootan, CSPI Director of Nutrition Policy (September 16, 1997). When that study was updated (*See* Paul A. Cotton et al., *Dietary Sources of Nutrients among US Adults, 1994 to 1996*, 104 Journal of the American Dietetic Association 921 (2004), data specific to ground beef as a subset of beef was not calculated.

[28] Paul A. Cotton et al., *supra* note 27 at 925.

[29] *Id*. at 926.

Beef, in total, was the third-largest contributor of saturated fat in children's diets in 1989-1991,[30] and, clearly, ground beef provided a large percentage of that saturated fat. In children's diets in 1989-1991, hot dogs were the ninth-largest contributor of saturated fat, while sausages were the eleventh.[31]

F. Health authorities advise individuals to consume less saturated fat in order to lower their risk of heart disease.

1. Heart disease is a major cause of illness and death in America.

Coronary heart disease (CHD) is the leading cause of death in the United States and a major cause of expensive medical procedures:

- CHD caused one of every five deaths (502,189 deaths) in the U.S. in 2001.[32]
- Heart-disease-related costs will total $133.2 billion in 2004.[33]
- In 2001 alone, there were an estimated 1 million angioplasty procedures, 516,000 bypass procedures, 1.3 million diagnostic cardiac catheterizations, 46,000 procedures for implantable defibrillators and 177,000 pacemaker procedures.[34]
- From 1979 to 2001, the number of cardiovascular operations and procedures increased by 417 percent.[35]

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[30] Amy Subar et al., *Dietary Sources of Nutrients Among Children, 1989 to 1991*, 102 Pediatrics 913 (1998).

[31] *Id.* at 917.

[32] Approximately 64,000,000 Americans have one or more types of cardiovascular disease, including high blood pressure (50 million), CHD (13.2 million), congestive heart failure (5 million), stroke (4.8 million), and congenital cardiovascular defects (1 million). American Heart Association, *Heart Disease and Stroke Statistics – 2004 Updat*e 3 (2003) at 9-10, available online at http://www.americanheart.org/downloadable/heart/1079736729696HDS Stats2004UpdateREV3-19-04.pdf.

[33] *Id.* at 11.

[34] *Id.* at 11.

[35] *Id.* at 40.

2. Reducing intake of saturated fat lowers the risk of heart disease.

Hundreds of studies have been conducted over the past 40 years to assess the effect of dietary saturated fat on serum cholesterol concentration in the blood. Overwhelmingly, they have found that the higher the intake of saturated fat, the higher the concentration of serum cholesterol.[36]

A person's serum cholesterol level is an excellent predictor of a person's risk of developing CHD. A 10-percent reduction in cholesterol reduces CHD mortality by 20 percent.[37]

In light of the causal relationship between saturated fat intake, serum cholesterol levels, and CHD rates, numerous health authorities have urged the public to eat less saturated fat.[38] Because "any incremental increase in saturated fatty acid intake increases CHD risk," and saturated fatty acids "are not required at any level in the diet" and play "no beneficial role," the Institute of Medicine of the National Academy of Sciences recommends that consumption of saturated fat should be "as low as possible" without undermining overall dietary quality.[39]

The 2005 *Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans* recommends that no more than 10% of total calories come from

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[36] Institute of Medicine of the National Academies, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids,* 8-47 (2002).

[37] *Id.* Also, *see, e.g.*, Scott M. Grundy, et al., *Implications of Recent Clinical Trials for the National Cholesterol Education Program Adult Treatment Panel III Guidelines*, 110 Circulation 228 (2004).

[38] *See, e.g.,* U.S. Department of Agriculture and U.S. Department of Health and Human Services, *Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2005* at Part D, Section 4 at 9, available online at http://www.health.gov/dietaryguidelines/dga2005/report/; Ronald M. Krauss, et al., *AHA Dietary Guidelines,* 102 Circulation 2284 (2000), available online at http://circ.ahajournals.org/cgi/content/full/102/18/2284; and U.S. Department of Agriculture, *The Food Guide Pyramid Booklet*, Center for Nutrition Policy and Promotion, Washington, D.C., 1996, at 7, available online at http://www.pueblo.gsa.gov/cic_text/food/food-pyramid/main.

[39] Institute of Medicine, *supra* note 36, at 8-50 and S-4.

saturated fat.[40] For people who have heart disease or are at high risk for developing it, saturated fat should provide less than 7 percent of total daily calories.[41] As noted above, ground beef, hot dogs, and sausages are significant sources of saturated fat.[42]

III. Lowering the fat limit in ground beef, hot dogs, and sausages would improve the public's health by lowering fat and saturated fat intake and reduce the risk of CHD.

Ground beef, hot dogs and sausages contribute significantly to the amount of saturated fat that people consume. The easiest way to reduce the saturated fat content of those products, and to help people choose diets consistent with the dietary recommendations of government and other leading health authorities, is to reduce the products' total fat, since much of the fat is saturated. By granting this petition, FSIS would make it easier for people to eat healthier diets and lower their risk of heart disease.

If our recommended revisions to the SOIs are adopted:

- the total-fat and saturated-fat content of a two-ounce serving of pork sausages would be reduced by half;[43]
- the total-fat and saturated-fat content of a two-ounce serving of a beef hot dog would be reduced by more than one-third.[44]
- the total-fat and saturated-fat content of a three-ounce serving of ground beef would be reduced by about 15%.[45]

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[40] *Report of the Dietary Guidelines Advisory Committee, supra* note 38.

[41] American Heart Association, *supra* note 2.

[42] *The Food Guide Pyramid Booklet*, *supra* note 38 at 7.

[43] The current limit is 50% fat by weight and several popular products are close to that percentage. *See* Table 2.

[44] This example compares a serving of a hot dog that is 19% fat with one that is 29% fat (Data from USDA, National Nutrient Database for Standard Reference for beef hot dog), available online at http://www.nal.usda.gov/fnic/foodcomp/search/. *See* Table 3.

[45] This example compares a serving of ground beef that is 30% fat with one that is 20% fat. The assumption is made that 75% of the ground beef is used for a hamburger and 25% is used for a dish such as spaghetti sauce in which the fat is retained. (Data from U.S. Department of Agriculture, National Nutrient Database for Standard Reference for broiled ground beef, available online at http://www.nal.usda.gov/fnic/foodcomp/search/). *See* Table 3. Most cooks

While the reductions in fat and calories are modest for each individual serving of sausage, hot dog, or ground beef, the savings in fat and saturated fat would add up over time, since those foods are popular parts of the typical American diet. The benefits would be the greatest for the individuals who are heavy consumers of those meats.[46]

- Five percent of adult men in 1994-1996 consumed about double the typical serving size of ground beef and pork breakfast sausage.[47]

- Five percent of teenage females and adult females over the age of 40 consumed ground beef serving sizes of 127 grams or more, about 50% more than the typical serving size of 85 grams.[48]

Lowering the fat content of ground beef, hot dogs, and sausages to our recommended SOI would have the following impact on fat in the total food supply:

- For the approximately 8.4 billion pounds of ground beef consumed in 2003, 122 million pounds of total fat and 43 million pounds of saturated fat would be removed.[49]

- For the 1.8 billion pounds of hot dogs consumed in 2002, 205 million pounds of total fat and 74 million pounds of saturated fat would be removed.[50]

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do not drain off the fat when they cook such foods as spaghetti sauce with meat. Of the first 100 recipes from home cooks available online at http://www.cooks.com, only 33 drained the fat from the meat.

[46] USDA's two-day survey of foods consumed aggregates hot dogs and luncheon meat, so hot dog consumption data for persons who consume the largest quantities is not readily available. *See* Helen Smiciklas-Wright, et al, *supra* note 6 at 74.

[47] *Id*. at 69 and 73.

[48] *Id*. at 69.

[49] The 8.4 billion pound figure is CSPI's estimate. (*See* American Meat Institute, *supra* note 10). The assumption was made that 62% of the total ground beef was 25% fat and 38% was 20% fat. Seventy-five percent of the ground beef was assumed to be cooked and broiled, and 25% was assumed to be cooked in manner in which the fat was retained, such as spaghetti sauce, meatloaf, and other dishes. *See* Table 3 for fat and saturated fat reductions per serving.

[50] The 1.8 billion-pound figure is CSPI's estimate. (*See* National Hot Dog and Sausage Council, *supra* note 11). The assumption was made that hot dogs are 29% fat (the fat content of a typical beef hot dog as reported by the USDA National Nutrient Database), half of all serving sizes are 45 grams, and half are 57 grams. *See* Table 3 for fat and saturated-fat reductions per serving.

- For the approximately 3.2 billion pounds of sausages consumed in 2002, 318 million pounds of total fat and 124 million pounds of saturated fat would be removed.[51]

The lower saturated fat intake would reduce the risk of CHD.

To reduce the risk of heart disease, health experts recommend that people eat leaner meats and trim off all visible fat.[52] Those recommendations, however, are not easily followed by lower-income consumers who are more likely to opt for cheaper, fattier ground beef than leaner, more expensive beef cuts.[53] While it is possible to trim some of the fat off of fatty beef cuts, it is impossible to "trim" the fat off of ground beef (though some fat drips off during cooking) or processed products like hot dogs and sausages.

Low-income consumers not only are heavier consumers of fatty ground beef and sausage products, but are among those most vulnerable to heart disease[54] and lacking access to health

[51] The 3.2 billion pound figure is CSPI's estimate. (*See* Paul S. Cotton*, supra* note 15). The assumption was made that, on average, fresh pork sausage is 33% fat when raw (the fat content of a typical pork sausage as reported by the USDA National Nutrient Database). *See* Table 3 for fat and saturated fat reductions per serving.

[52] U.S. Department of Agriculture and U.S. Department of Health and Human Services, *Dietary Guidelines for Americans*, Fifth Edition, Home and Garden Bulletin No. 232 (2000).

[53] From November 2003 – April 2004, a rib eye steak and a sirloin steak graded Choice were on average $6.80 and $3.00 more expensive per pound, respectively, than ground beef with a fat level of 16% or more. (USDA only tracks ground beef prices with a fat content of 16% fat or more, or 15% fat or less). *See* U.S. Department of Agriculture, Economic Research Service, Retail Scanner Prices for Meat, January-June 2004, available online at http://www.ers.usda.gov/data/MeatScanner/default.asp?ERSTab=3. CSPI's Washington, D.C. Market Survey found that the price difference between ground beef containing 20% or less fat and 25% or more fat was 40 cents to $2.00 a pound in the markets in the lowest-income wards. *See*, also: Ephraim S. Leibtag and Phil R. Kaufman, *supra* note 16 at 6, and Adam Drewnowski*, supra* note 16 at 10.

[54] Low-income populations have a disproportionate burden of death and disability from cardiovascular disease. *See, e.g.,* Center for Disease Control, *Eliminate Disparities in Cardiovascular Disease*, available online at http://www.cdc.gov/omh/AMH/factsheets/cardio.htm. Disadvantage in multiple socioeconomic dimensions was found to be associated with the greatest risk of developing hypertension. *See*, *e.g.*, Ana V. Diez Roux, et. al., *Socioeconomic Disadvantage and Change in Blood Pressure Associated with Aging*, 106 *Circulation* 703 (2002).

care.[55] If the fat limits were reduced in ground beef, hot dogs, and sausages, those consumers likely would be especially benefited.

IV. The food industry clearly can produce tasty, lower-fat versions of ground beef, hot dogs, and sausages.

There is no doubt that food processors can provide lower-fat ground beef, hot dogs, and sausages because such products are currently available, servicing a niche market. Seventy-five percent of the ground beef currently purchased in America has a fat content of 11% to 20%, well below the 30% limit in the existing SOI.[56]

Surveys by the CSPI and the Food Trust found that most Safeway supermarkets in Washington, D.C., and most chain supermarkets in Philadelphia sell only ground beef that is 20% fat or lower.[57] The ground beef sold by B.J.'s Wholesale Club is 15% fat or less.[58] Chili's, Outback Steakhouse, and Perkin's all serve hamburgers made of ground beef with 20% fat.[59]

Additionally, USDA itself requires that the ground beef it purchases for many of its feeding programs be much lower in fat than the 30 percent limit. The ground-beef specifications for the National School Lunch Program, the Nutrition Program for the Elderly, the Food Distribution Program on Indian Reservations, and the Emergency Food Assistance

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[55] Poor (34%), near-poor (32%), and middle-income (14%) persons are more likely than high-income persons (5%) to lack health insurance. In turn, the uninsured, as compared with their insured counterparts, receive less preventative care, are sicker, are more likely to be sicker upon hospital admission, and are more likely to die while hospitalized. Additionally, the poor (20%) are more likely than those with high incomes (8%) to report no on-going source of care. *See, e.g.,* Department of Health and Human Services, *National Healthcare Disparities Report*, 2003. As individuals move into higher levels of socioeconomic status, their health improves, even accounting for individual health risk factors. *See, e.g.,* Institute of Medicine of the National Academies, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*, 35 (2003).

[56] National Cattlemen's Beef Association, *supra* note 19.

[57] *Supra* notes 17 and 18.

[58] BJ's Fresh Meat Guide, available online at http://www.bjs.com/products/groceries/meat_guide.shtml. BJ's Wholesale Club, Inc. is a wholesale club chain operating in the eastern United States from Maine to Miami and in Ohio.

[59] *See* Table 1.

Program have a target fat content of 15% and a fat limit of 18%. The fat content of ground-beef patties for those programs cannot exceed 10%.[60]

Hot dogs with a fat content of 20% or less, and even fat-free hot dogs, are currently available, sold to customers in a niche market.[61] For example, Hebrew National Reduced-Fat Beef Franks have a fat content of 20%, Ball Park Lite Franks and Oscar Mayer Light Franks have a fat content of 14%. Also, all three brands offer fat-free hot dogs. Moreover, some smaller producers market gourmet products that are lower-fat. For example, Applegate Farms produces its regular beef and regular beef/pork hot dogs with 16% fat and 10% fat, respectively.[62]

These reduced-fat (if not the low-fat and fat-free) hot dogs are delicious. A 1993 *Consumer Reports* taste comparison found that Hebrew National Lite Hot Dogs (20% fat) and Oscar Mayer Light Pork and Beef Hot Dogs (19% fat) rated in the "very good" category, along with several full-fat (27-30%) versions of beef and meat hot dogs.[63] In 2001, *Consumer Reports* rated bologna, which is included in the SOI for hot dogs, and found that two of the five lower-fat

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[60] U.S. Department of Agriculture, Agricultural Marketing Service, *Technical Requirements Schedule –GB-2004, for USDA Purchases of Ground Beef Items*, *Frozen* (2004), and U.S. Department of Agriculture, Agricultural Marketing Service, *Livestock and Seed Program: Commodity Purchase Programs*, undated fact sheet available online at http://www.ams.usda.gov/lscp/index.htm.

[61] *See* Table 2.

[62] E-mail from Rob O'Donnell, Applegate Farms, to Robbin Marks, CSPI, March 4, 2004.

[63] *Hot Dogs: Can They Fit In a Healthful Cookout?* Consumer Reports 415 (1993). Thirty-seven kinds of beef and meat hot dogs were rated. The analysis found that one product containing 14-26% fat was "excellent," 5 were "very good," 4 were "good," and 1 was "poor." Among products containing 27-31% fat, none was "excellent," 15 were "very good," 5 were "good," 1 was "fair," and 1 was "poor." In contrast, 2 of the low-fat hot dog products (2-13% fat) were "good" and 2 were "fair;" not one was "excellent" or "very good." That survey indicates that people would be quite satisfied with hot dogs that contain 20% fat, the level requested in this petition. Furthermore, we suspect that over the past decade manufacturers have improved their techniques for producing reduced-fat hot dogs.

brands of bologna – Hebrew National Lean Beef Bologna (now called "light") and Russer Light Beef Bologna - tasted better than most higher-fat brands.[64]

Sausages can be produced with far less fat than the 50%-fat limit for the raw product (roughly 45% fat when cooked) set by the existing SOI. Products available with less fat include Healthy Choice Pork/Turkey Low Fat Breakfast Sausage (with 5% fat when cooked), as well as Jimmy Dean's 50% Less Fat Pork Sausage (with 18% fat when cooked) and Jimmy Dean's 97% Fat Free Pork Sausage (with 3% fat when cooked).[65] USDA's own standards for frozen pork sausages for its feeding programs establish a target fat content of 17%.[66]

Clearly, industry has the ability to produce reduced-fat hot dogs, sausages and ground beef. Taste-tests demonstrate the capability of food manufacturers to reduce the fat in their products and retain the flavor.

V. Industry voluntary efforts to market reduced-fat products do not guarantee widespread availability of those more healthful formulations.

Because of the availability of products with lower fat contents than the SOIs, companies may argue that improved SOIs are not needed. For example, many raw pork sausages are manufactured to contain 34% to 40% fat when raw,[67] well below the 50% limit. However, these voluntary efforts are not enough. Even at a reduced-fat level, sausages remain a very fatty and unhealthful food. For example, just one two-ounce Johnsonville Breakfast Sausage, which is

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[64] *Talking Turkey (and ham and bologna)*, Consumer Reports (Sept. 2001).

[65] *See* Table 2.

[66] U.S. Department of Agriculture, Agricultural Marketing Service, *Technical Data Supplement for the Procurement of Frozen Pork Sausage Items,* TDS-802 (1999). USDA has not purchased pork sausage in many years. Telephone interview with Kelly Gabel, AMS, USDA (April 20, 2004).

[67] *See* Table 2 for the fat quantities of sausages when cooked. The raw fat content was assumed to be 4 or 5 percentage points higher than when the sausages were cooked. *See* telephone interviews with Bethany Showell, ARS, and Bonnie King, Gwaltney/Smithfield, *supra* note 24.

34% fat when raw, still derives 75% of its total 190 calories from fat and has 16 grams of fat (25% of DV) and 6 grams of saturated fat (28% of DV) (% DVs based on a 2,000- calorie diet).[68] In addition, while less-fatty hot dogs are produced, a fat level just below the SOI remains the most common fat formulation currently available.

Modifying the SOIs is the best way to ensure that more healthful products are available to all consumers, particularly low-income consumers. As discussed above, consumers in certain communities may have no choice but to purchase the higher-fat products if they can only shop locally.

Industry might contend that revising the SOIs as requested would limit consumer choice. However, even if lower fat limits were adopted, ground beef, hot dogs, and sausages with varying fat contents would remain on the market. While the fattiest, least-healthful products would be eliminated, that would constitute a net gain, not a loss, in a society plagued by heart disease.

VI. Because nutrition labeling is not available for all products or in all venues, revised standards of identity are necessary.

Some might argue that lowering the fat limits in the SOIs is unnecessary because nutrition labeling can help consumers select more healthful products. Nutrition labeling clearly provides consumers with important information about key nutrients in food products and allows them to compare different products. However, the availability of labeling should not be used as an excuse not to take other life-saving steps to improve the food supply. USDA has clearly recognized the need for a variety of approaches to promote health, because, for instance, the

[68] Nutrition facts are available online at http://www.johnsonville.com.

agency did not eliminate the current SOIs for hot dogs and sausages when these products started carrying nutrition labeling.[69]

As scientific research has proven the harmfulness of high-fat meat products, it is eminently appropriate for health authorities and regulatory agencies to translate that knowledge into incremental improvements in product standards. Moreover, with almost half of the food dollars currently spent outside the home,[70] the absence of clear nutrition labeling in restaurants and similar food-service venues undermines consumers' ability to choose more healthful foods. Patrons have no way to know the fat content of ground beef, hot dogs, and sausages served at restaurants and other venues. Given the popularity of hamburgers, hot dogs, and sausages in restaurants and other food service venues-from street-corner carts to baseball stadiums-policies that ensure that lower-fat ground beef, hot dogs, and sausages are served in those venues could have significant health benefits.

Revised SOIs can set a ceiling on fat and saturated fat content and eliminate the least healthful versions of each product, thereby protecting everyone, whether or not consumers choose to read nutrition labels, when they are available. Studies show that consumers of lower education levels are less likely to read food labels.[71]

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[69] In the 1996 ANPR, FSIS asked commenters whether food standards should be completely eliminated, and commenters expressed little support for such an action, noting that "food standards protect consumers from fraudulent and substandard products by establishing a core basis upon which similar products are formulated." *See* Meat and Poultry Advisory Committee Staff, Office of Policy, Program Development and Evaluation, U.S. Department of Agriculture, Food Safety and Inspection Service, *Issue Paper: Modernizing Standards of Identity for Meat and Poultry Products,* 3 (2001).

[70] National Restaurant Association, *Industry at a Glance* (2004) available online at http://www.restaurant.org/research/ind_glance.cfm.

[71] Marian L. Neuhouser, et. al., *Use of Food Nutrition Labels is Associated with Lower Fat Intake*, 99 Journal of the American Dietetic Association 45 (1999).

With an epidemic of heart disease in the U.S., we need to take stronger action than just providing labeling on products that are high in fat. Fortunately, in the case of ground beef, hot dogs, and sausages, marketers can easily lower the fat content of the least-healthful products.

VII. Any increased costs to industry or consumers resulting from revised SOIs would be minimal and would be offset by health-care-cost savings.

Opponents of changing the SOIs may argue that lowering the fat limits would increase the prices of ground beef, hot dogs, and sausages. We believe that any price increases would be minimal. Some manufacturers do charge more for lower-fat hot dogs while others charge the same price,[72] but there is no rationale for higher prices. In those products, water is substituted for fat, which should *lower* the cost.[73] We suspect that the current higher prices for reduced-fat products reflect the fact that smaller volumes are produced and health-conscious consumers are willing to pay a higher price.

According to wholesale prices reported to USDA and wholesalers in Washington, D.C., surveyed by CSPI, the difference in the wholesale price between 20% fat ground beef and 27% fat ground beef is 16 to 30 cents per pound.[74] Thus, significantly higher prices for lower-fat ground beef at the retail level are not justified. Even assuming a small price increase due to the

[72] On June 22, 2004, http://www.peapod.com, a home-delivery grocer, advertised a price of $4.88/pound for Ball Park Beef Franks Lite, as compared to regular Ball Park Beef Franks at $4.29/pound. Regular Hebrew National Beef Franks and Reduced Fat Beef Franks were the same price -- $6.65/pound. On April 17, 2004, the Food Lion supermarket in Gaithersburg, MD, charged the same price for all types of Ball Park and Oscar Mayer hot dogs and beef bologna. On April 17, 2004, and July 1, 2004, the Food Lion supermarket, and on August 29, 2004, the Giant supermarket, both in Gaithersburg, MD, charged the same price per package for Jimmy Dean regular pork sausage (41% fat when raw) and Jimmy Dean 50% Less Fat sausage (22% fat when raw), but the package size for lower-fat sausage is smaller (12 oz.) than that of high-fat sausage (16 oz.), so the cost per serving for low-fat sausage is higher.

[73] *See* Table 4.

[74] In 2003, the average wholesale price differential reported by the largest meat packers between 27% fat ground beef and 19% fat ground beef was 16 cents, though most of their volume is in meat cuts and trimmings, not in ground beef. *See, e.g.*: U.S. Department of Agriculture, *Mandatory Boxed Beef Sales Reporting for the Largest Packers, Agricultural Marketing Service*, January 17, 2004. *See supra* note 22. CSPI called several meat wholesalers in Washington, D.C. in March 2004 and found a price difference of 10 to 30 cents between 20% and 27% fat ground beef.

revised SOIs for ground beef, the impact on a household's overall food budget would be minimal. In every income class, purchases of ground beef only comprise 2% of the total at-home food purchases for most individuals.[75] Most important, it is likely that any slightly higher prices passed onto consumers would be more than offset by the health-care savings from consumers' lower risk of CHD, which costs society over $133.2 billion annually.[76]

VIII. Statement of Legal Grounds

A. The FMIA provides FSIS with clear legal authority to reduce the maximum fat fat levels in the SOIs for ground beef, hot dogs, and sausages.

Section 7 of the FMIA gives USDA the power to adopt and revise standards of identity whenever it determines that such action is "necessary for the protection of the public."[77] SOIs have evolved over the years to reflect changes in government priorities, industry practices, health concerns, and consumer preferences. Originally, the standards simply specified permissible ingredients and coloring agents for meat products and listed the basic compositional and processing requirements for products that were to bear a certain name. Later, during the 1940s, USDA developed policies and standards to prevent "economic deception," such as the use of cheap fillers in meat products in lieu of more valuable constituents.[78]

Today, "protection of the public" means not only protection from economic harm, but also, and as important, protection from health harm caused by over-consumption of nutrients like saturated fat, cholesterol, and sodium. In fact, protection of the health of consumers is expressly

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[75] Noel Blisard, U.S. Department of Agriculture, Economic Research Service, *Food Spending in American Households, 1997-98*, ERS Statistical Bulletin No. 972, 65 (2001). In addition to the information on ground beef purchases, this study indicates that, for every income class, less than 1% of the average annual per person expenditure for food eaten at home is spent for hot dogs, and another 1% for pork sausages. *Id*. at 65-66.

[76] American Heart Association, *supra* note 32 at 11.

[77] 21 U.S.C.§602(c)(2).

[78] 61 Fed. Reg. 47453, 47454 (1996).

noted as one of the fundamental goals of the FMIA.[79] To meet the health objective of the Act and to reflect the scientific developments of the past few decades, which have established a firm link between saturated-fat consumption and increased risk of heart disease, FSIS should revise its regulations.

B. FSIS has revised its SOIs in the past to consider the impact of diet on health, and is working to modernize SOIs in general.

1. FSIS has made changes to its SOI for hot dogs to make that food more healthful.

In a number of proceedings over the past thirty years, FSIS has revised its SOI for hot dogs to reflect the impact of diet on health. In May 1969, USDA first proposed a fat limit for the hot dogs SOI of 33%.[80] As part of its deliberations, USDA held three days of public hearings and reviewed over 600 comments, including comments filed by Ralph Nader, who once labeled the hot dog "America's deadliest missile."[81]

Later that year, the Department finalized its proposal, which was revised to include a fat limit of 30% for hot dogs, 3% less than it had originally proposed. That decision was based, in part, on health concerns: The agency noted that the need to establish a limit on the amount of fat was "clearly demonstrated"[82] based on "dietary considerations," among other factors.[83] USDA

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[79] 21 U.S.C. §602.

[80] *See* 34 Fed. Reg. 7823 (1969). At the time that the fat limit was proposed, the average hot dog consumed by Americans contained 32% fat, with some hot dogs containing up to 51% fat. Carole Shifrin, *By Any Other Name*, Washington Post, April 23, 1971, at B1.

[81] Dotty Enrico, *Hot Dog! Fat-free: Oscar Mayer also cuts Calories and Sodium*, USA Today, January 18, 1995, at 4B.

[82] 34 Fed. Reg. 14685 (1969).

[83] *Id*.

thus recognized the harmful effects of a high-fat diet and, accordingly, limited the maximum fat level in the hot dog SOI.[84]

USDA's 1969 decision to set a 30% fat maximum for hot dogs is especially significant since, at the time, there was much less agreement than there is today about the need to eat less saturated fat. For instance, that year Food and Drug Administration (FDA) Commissioner Herbert Ley testified before the Senate Select Committee on Nutrition and Human Needs that "[t]he scientific correlation between . . . [fat] . . . and arteriosclerosis is an extremely tenuous one. . . . Although there is a great deal of publicity, there is very little fact that clearly links the ingestion of fat in one form or another with heart disease."[85]

Less than a decade later, in 1977, the Senate Select Committee on Nutrition and Human Needs, citing copious evidence, issued a report, *Dietary Goals for the United States*, that advised Americans to eat less fat, saturated fat, and cholesterol. Next, in 1979, the U.S. Surgeon General issued *Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention,* which described the role that saturated fat and dietary cholesterol play in the development of heart disease.[86] Then, in 1980, USDA joined the Department of Health and

[84] Since they were codified in 1970, more than 34 years ago, the fat limits for ground beef and sausages have not been changed, despite the consensus that Americans should be consuming less saturated fat.

[85] Patricia Hausman, *Jack Sprat's Legacy: The Science and Politics of Fat & Cholesterol* 153 (Richard Marek Publishers, New York, 1981).

[86] *See* Office of the Assistant Secretary for Health and Surgeon General, U.S. Department of Health, Education, and Welfare, *Healthy People:The Surgeon's Report on Health Promotion and Disease Prevention* 129-130 (1979). Even in the 1970s, a few prescient individuals recognized the need to further limit the amount of fat in meat products. In 1972, Representative Seymour Halpern of New York urged Congress to lower the maximum fat level of hot dogs to 20% because of health concerns. 180 Cong. Record 8999-9000 (1972). Representative Halpern undertook a study to determine the quality of hot dogs. He believed that since hot dogs are such a staple product in American households, they should adhere to high standards of quality. Halpern found hot dogs to be overpriced and to offer low nutritional value, including high fat and low protein. Accordingly, he stated that, "Statistics reveal that almost without exception all manufacturers are complying [with a 30% fat limit]. However, one must ask if even these requirements aren't too lenient." *Id.*at 9000. He therefore recommended that USDA "[l]ower the legal limit of permissable [sic] fat content from 30 percent to 20 percent." *Id.* His proposal was not accepted.

Human Services in issuing the first edition of the *Dietary Guidelines for Americans*, which recommended that Americans "avoid too much fat, saturated fat, and cholesterol."[87]

In 1988, FSIS took another important step toward encouraging the consumption of lower-fat hot dogs and similar products by amending the standards of identity to allow processors to increase the amount of water in their products, as long as the maximum combination of fat and water did not exceed 40% of the product's weight.[88] In its final rule, FSIS declared its desire to "facilitate the marketing, when possible, of lower-fat products"[89] and stated that the change "provides processors more flexibility than they have had under the standards to produce lower fat frankfurters and similar cooked sausages."[90]

2. FSIS is considering more sweeping changes to its SOIs.

Recently, FSIS has gone even further toward modernizing SOIs to reflect health concerns. In 1995, it developed an interim policy, still in effect, that allows manufacturers to adapt the existing standards to enable them to market products named by a defined nutrient-content claim and the standardized or traditional name (e.g. "low fat hot dog").[91] One year later,

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Representative Halpern's proposal was based in part on a 1972 Consumer Reports study that found that the average hot dog in 1937 contained 19% fat and 19.6% protein, while the average hot dog in 1970 contained 28% fat and 11.7% protein, a 60% decline in nutritional quality. *Frankfurters*, Consumer Reports, 73 (1972). That change has been disputed by the meat industry. *See* Emerson D. Moran, *So You Think the Lowly Hot Dog Is Not a Food for Kings? Baloney!,* L.A. Times, Jan. 1, 1973.

[87] U.S. Department of Agriculture and U.S. Department of Health and Human Services, *Nutrition & Your Health: Dietary Guidelines for Americans,* Home and Garden Bulletin No. 232 (1980).

[88] 53 Fed. Reg. 8425, 8426 (1988).

[89] *Id.* at 8426.

[90] 53 Fed. Reg. 8425.

[91] *See* FSIS Policy Memos 121B and 123. FSIS did issue a proposed rule in late 1995 that would govern the use of nutrient-content claims with standardized product names, but that rule has yet to be finalized.

FSIS issued an advance notice of proposed rulemaking (ANPR), which sought comment on a wide-reaching reform of its SOIs. In that notice, the agency stated:

> Consumer expectations regarding the nutritional composition of foods have also changed in recent years. Health-conscious consumers looking for convenience and nutritional quality in their food purchases have come to play a decisive role in the marketplace. A growing body of scientific evidence that links dietary intake to health supports the concerns of these consumers, who demand products based upon traditional recipes which have been modified to have lower amounts of constituents with negative health implications, such as saturated fat and cholesterol.[92]

While FSIS has not yet moved forward with this ANPR, as recently as 2001, agency staff indicated that it is working with FDA to develop "guiding principles" for modernizing food standards that include health criteria.[93]

We believe that our requested revisions to the SOIs for ground beef, hot dogs, and sausages are consistent with FSIS's recent actions regarding SOIs.[94] Such action represents one targeted approach to lowering the risk of heart disease, the number-one killer in the U.S.

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[92] 61 Fed. Reg. 47455 (1996).

[93] Meat and Poultry Advisory Committee Staff, *supra* note 69. Interestingly, for decades the Food and Drug Administration has used food standards to protect consumer health and safety. In the 1950s, FDA developed standards for "enriched" products in order to eliminate nutritional deficiencies in the post-war era. It recently revised those standards to include fortification with folic acid to prevent birth defects. Moreover, before enactment of the Food Additive Amendments in the late 1950s, FDA used food standards to limit the introduction of inappropriate chemical additives into food products. *See, e.g.,* Suzanne White Junod, *The Rise and Fall of the Federal Food Standards in the United States: The Case of the Peanut Butter and Jelly Sandwich,* Federal Food and Drug Administration, (1999), available online at http://www.fda.gov/oc/history/slideshow/default.htm. Additionally, the World Health Organization recently recommended both improved food labeling and additional measures to ensure that foods are produced in a manner consistent with dietary recommendations. *See, e.g.,* World Health Assembly, *Global Strategy on Diet, Physical Activity and Health*, May 2004.

[94] In addition to amending its standards of identity, FSIS has also changed grading terms for beef to encourage consumers to eat more healthfully. In 1987, at the behest of consumer and public health groups and industry trade associations, USDA replaced the term "good" with the term "select" in its beef-grading nomenclature to encourage more people to eat lower-fat beef. Irvin Molotsky, *'Select' Will Be Government's New Name for a Low-Fat Beef*, New York Times, Sept. 23, 1987, at C6.

According to J. Patrick Boyle, then head of USDA's Agricultural Marketing Service, the grade-name change from "good" to "select" would "present a more positive image of this grade of beef and help calorie-conscious consumers to choose leaner cuts of beef." Marjorie Williams, *Odd Bedfellows United Under Welfare Blanket*, Washington Post, Mar. 5, 1987, at A25. Consumers reacted positively to the change. In 1987, only 265 million pounds of beef were graded "select." By 2003, that number had increased to 8.1 billion pounds, or 40% of all meat that is graded. (During that same period, the total quantity of graded beef increased from 12.1 billion to 21.1 billion pounds: U.S. Department of Agriculture, Agricultural Marketing Service, *Beef Grading Historical Records* (2004)).

Obviously, many other education and regulatory measures could provide additional, larger reductions in heart disease.

IX. Conclusion

For the foregoing reasons, the Petitioners urge FSIS to initiate a rulemaking to reduce the maximum allowable fat levels in the standards of identity for ground beef to 20%, for hot dogs to 20% over a five-year period, and for certain sausages to 25% over five years. Such action would protect consumers' "health and welfare" in accordance with the FMIA.

Respectfully submitted,

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Table 1

Fat Content of Raw Ground Beef Used by Selected Restaurants

Restaurant	**% Fat in Raw Ground Beef Used in Hamburgers**
Bob Evans	25%
Chili's	20%
Outback Steakhouse	18-20%
Perkin's	20%
Denny's	24-26%
Ruby Tuesday	25%

Telephone Survey by CSPI of fat content in hamburgers at selected restaurant chains, January-February 2004.

CSPI sent letters in August and September, 2004 to the following restaurant companies requesting that they notify CSPI of the fat content in their ground beef, but CSPI received no reply: Wendy's, Taco Bell, Applebee's, Dairy Queen, T.G.I.F. Friday's, Sonic Corporation, Jack in the Box, Hardee's, International House of Pancakes, Golden Corral Corporation, and Whataburger, Inc. McDonald's and Burger King responded to CSPI's letters, but would not provide information on the fat content of the raw ground beef they use.

Table 2

Fat Content of Cooked Meat Products

Product	Serving Size (grams)	Fat (grams)	Percentage Fat (by weight)	Calories
REGULAR HOT DOGS/KNOCKWURST/BOLOGNA				
Hebrew National Dinner Beef Franks	113	32	28	350
Hebrew National Beef Franks	49	14	28	150
Hebrew National Beef Knockwurst	85	24	28	260
Ball Park Franks – Pork/Beef and Beef	56	16	28	180
Ball Park Kosher Beef Franks	42	12	28	140
Oscar Mayer Weiners – Pork/Turkey	45	13	28	146
Oscar Mayer Beef Franks XXL Premium	76	22	28	230
Oscar Mayer Weiners – Beef	45	13	28	140
Bar-S Franks – Chicken/Pork/Beef	42	12	28	140
Bar-S Beef Franks	42	13	30	140
Nathan's Beef Franks	57	15	26	170
Super G Beef Franks	45	12	26	140
Saag Beef Franks	57	12	21	150
Applegate Beef Hot Dogs	43	7	16	100
Applegate Big Apple Dogs	57	6	10	100
Farmland Jumbo Cheese Franks	57	10	17	110
Farmland Hot Dogs	45	13	28	140
Best's Kosher Beef Franks	42	11	26	130
Hot Dog - Beef, Typical[1]	57	17	29	188
Hot Dog – Beef/Pork, Typical[1]	57	16	28	174
REGULAR BOLOGNA				
Hebrew National Beef Bologna	28	8	28	160
Saag Beef Bologna	57	12	21	140
Saag German Bologna	57	13	22	150
Oscar Mayer Beef/Chicken, Pork, Beef Bologna(1)	28	8	28	88
Best's Kosher Beef Bologna (unsliced)	57	14	24	70
Russer Beef Bologna	57	15	26	180
Beef Bologna, Typical[1]	28	8	28	87
Beef/Pork Bologna, Typical[1]	28	7	25	86
NONFAT/REDUCED-FAT HOT DOGS				
Hebrew National Reduced Fat Beef Franks	49	10	20	120
Hebrew National 97% Fat Free	49	2	3	45
Ball Park Lite –Beef/Pork Franks/Lite Beef Franks	50	7	14	100
Ball Park Fat Free Franks/Fat Free Beef Franks	50	0	0	45
Oscar Mayer Light Beef Franks	57	8	14	110
Oscar Mayer Light (Pork/Turkey/Beef) Franks	57	8	14	111

Product	Serving Size (grams)	Fat (grams)	Percentage Fat (by weight)	Calories
Oscar Mayer Fat Free Beef Franks	50	0	0	39
Oscar Mayer Fat Free Franks (Pork/Beef)	50	0	0	36
Healthy Choice Beef /Meat Franks	50	3	6	70
NONFAT/REDUCED-FAT BOLOGNA				
Oscar Mayer Light Bologna (Beef and Pork/Beef)	28	4	14	56
Oscar Mayer Fat-Free Bologna (Pork/Beef)	28	0	0	22
Hebrew National Light Beef Bologna	57	5	8	90
Russer Light Bologna (Beef and Mixed Meat)	57	8	14	120
REGULAR BREAKFAST SAUSAGE				
Johnsonville Breakfast Sausage	55	16	29	190
Johnsonville Maple Breakfast Links	55	18	32	200
Johnsonville Brown Sugar and Honey Break Links	55	15	27	190
Jimmy Dean Fresh Pork Sausage Links	54	13	24	150
Bob Evans Original Links	51	16	31	190
Saag Pork Breakfast Links	57	12	21	140
Armour Brown and Serve Original Cooked Sausage	45	14	31	160
Farmland Pork Sausage Links – Honey and Maple	54	23	42	230
Farmland Special Select Premium Pork Sausage Links or Patties	48	17	35	200
Precooked Sausage, Typical[1]	55	19	34	208
REDUCED-FAT BREAKFAST SAUSAGE				
Healthy Choice Pork/Turkey Links or Patties	55	3	5	70
REGULAR FRESH PORK SAUSAGE				
Jimmy Dean Pork Sausage	56	21	37	220
Gwaltney Pork Sausage	39	14	35	150
Briggs Pork Sausage	36	14	38	150
Smithfield Pork Sausage	55	24	43	250
Bob Evans Original Recipe Pork Sausage	53	19	35	210
Farmland Pork Sausage Roll	56	25	44	250
Fresh Pork Sausage, Typical, Cooked[1]	48	14	29	163
REDUCED-FAT PORK SAUSAGE				
Jimmy Dean 97% Fat Free Pork Sausage	70	2	3	90
Jimmy Dean 50% Less Fat Pork Sausage	70	13	18	170

[1] Source: U.S. Department of Agriculture National Nutrient Database for Standard Reference, available on line at http://www.nal.usda.gov/fnic/foodcomp/search.

Table 3

Nutrient Content (cooked) Based on Fat Content of Ground Beef (raw), Hot Dogs (cooked) and Sausage (raw)								
Food and Fat Percentage	**Serving Size (grams)**	**Total Fat (grams)**	**Saturated Fat (grams)**	**Calories**	**Calories from Fat**	**Fat % DV[3]**	**Calories from Saturated Fat[3]**	**Saturated Fat % DV[3]**
Ground Beef*								
30 % Fat[1]	85	20.1	7.6	268	181	30%	68	38%
25% Fat [1]	85	19.0	7.2	260	171	29%	65	36%
20% Fat[1,2]	85	17.0	6.5	244	153	26%	59	33%
15% Fat [1]	85	14.1	5.4	220	127	21%	49	27%
10% Fat [1]	85	10.3	3.9	188	93	15%	35	20%
Hot Dog-Beef								
29% Fat[1]	57	16.9	6.7	188	152	25%	60	33%
19% Fat[1,2]	57	11.1	4.6	133	100	17%	41	23%
Hot Dog-Beef/Pork								
28% Fat[1]	57	15.8	6.1	174	142	24%	55	31%
20% Fat[2]	57	10.5	3.5	124	94	16%	31	17%
Fresh Pork Sausage								
48% Fat[4]	55	24.0	8.9	250	216	36%	80	45%
33% Fat[1,6]	55	15.6	5.0	186	140	23%	45	25%
22% Fat[5]	55	10.2	3.5	134	92	15%	32	18%

*The nutrient content of ground beef is calculated on the basis of 75% of the ground beef cooked and broiled as a hamburger, and 25% cooked in ways in which the fat is retained, such as spaghetti sauce.

[1] These are typical fat amounts for typical products. Calculated using USDA National Nutrient Database for Standard Reference and Data from Dietary Guidelines for Americans.
[2] This would be the nutritional content if products met the standard of identity recommended in this petition. Calculations using USDA National Nutrient Database for Standard Reference and Dietary Guidelines for Americans.
[3] Percent calories are based on the Dietary Guidelines for Americans- 2,000 calorie day diet, 600 calorie maximum for total fat, 180 calorie maximum for saturated fat.
[4] Nutrition facts based upon Smithfield Pork Sausage. Data on loss of 5 percentage points of fat during cooking provided by company, April 4, 2004.
[5] Nutrition facts based upon Jimmy Dean- 50% Less Fat Pork Sausage. Assumption is made that 4 percentage points of fat are lost during cooking. At 22% fat, the sausage is close to, but not at the 20% fat recommended SOI.
[6] Assumption is made that 4 percentage points of fat are lost during cooking. Data on fat loss from USDA, ARS, April 16, 2004.

Table 4

Protein/Water/Fat Content of Various Fat Hot Dogs

Type of Hot Dog	% of Fat	Serving Size (grams)	Water (grams)	Protein (grams)	Fat (grams)
Beef and Pork	10	57	40.6	6.3	5.7
Beef and Pork	28	57	31.9	6.6	15.8
Beef	19	57	36.4	6.8	11.1
Beef	29	57	29.7	6.4	16.9

Data on nutrient content of various hot dogs from USDA National Nutrient Database for Standard Reference

Appendix A

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