

July 24, 2023

Division of Dockets Management Food and Drug Administration Department of Health and Human Services 5630 Fishers Lane, Room 1061 Rockville, MD 20852

Comment on Request for Information re: Food Labeling in Online Grocery Shopping (Docket No. FDA-2023-N-0624)

The Center for Science in the Public Interest (CSPI) applauds FDA for gathering information that it will use to help improve consumer access to consistent and accurate nutrition, ingredient, and allergen information for packaged foods sold through e-commerce. We submitted comments in 2021 urging the agency to issue guidance about how nutrition, ingredients, and allergen information should be displayed at the online point of sale (Appendix A). We stand by all of our previous recommendations and hope the agency moves swiftly to prioritize this important food labeling guidance.

In its Request for Information, FDA has posed several questions to the public, including:

- 1.1 What mandatory label information is currently available through online grocery shopping platforms? How consistently is mandatory label information presented across online grocery shopping platforms?
- 1.2 How is nutrition, ingredient, and major food allergens information presented through online grocery shopping platforms? For example, where is the information available on the web page in relation to the product?
- 1.3 When provided, is the nutrition, ingredient, and major food allergens information in the same format as on the packaged product (*e.g.*, Nutrition Facts label format)? If pictures of the product are used, how does the manufacturer, retailer, or third-party online grocery provider ensure the information in the picture is consistent with the package label, readable, and accessible on all devices (*e.g.*, laptops, smartphones etc.)?

Our previous comments provided examples of four products from different online retailers, each with different labeling deficiencies with respect to availability and accessibility of information that is required on food packages:

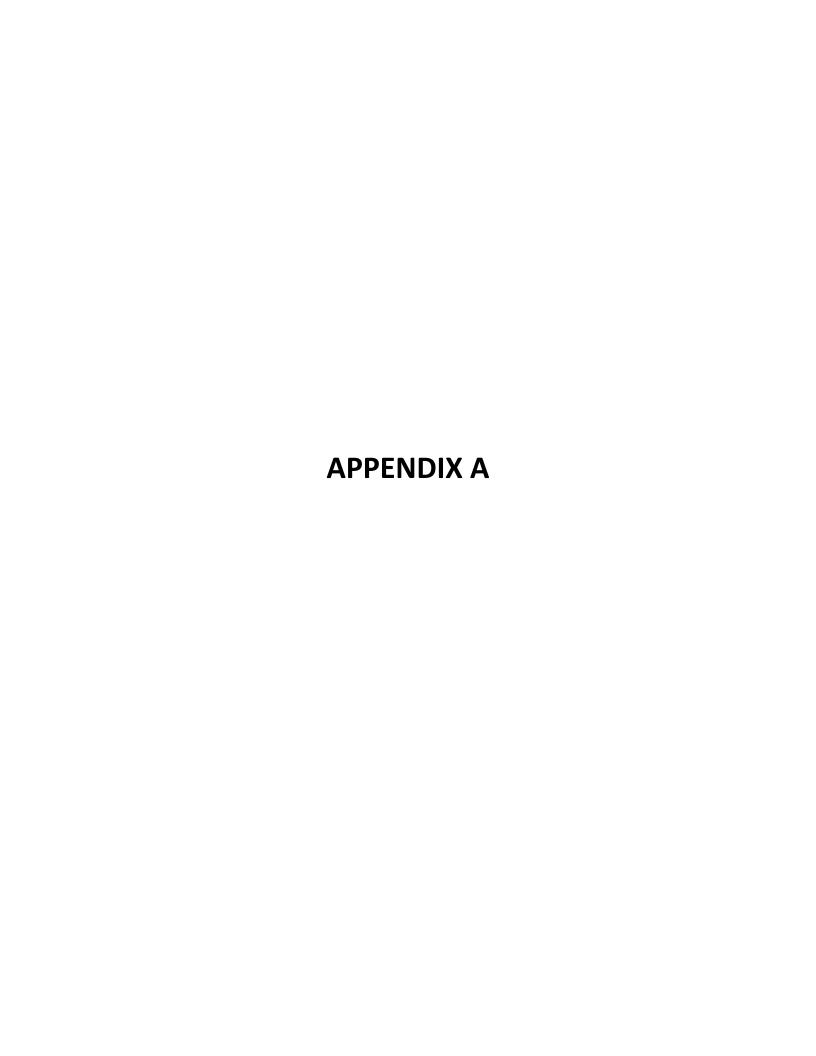
- Kellogg's Frosted Strawberry Pop Tarts from Safeway.com with an incorrectly formatted "Nutrition Facts" label, unintuitively located under a tab called "Ingredients."
- Nabisco's Chips Ahoy cookies from Walmart.com with substantial intervening marketing information prior to an incorrectly formatted "Nutrition Facts" label.
- General Mills' Cheerios from Target.com marketed using an image bearing a health claim but modified to omit the additional disclosure required alongside the claim.
- Checkers and Rally's Famous Seasoned Fries on Amazon.com with no ingredients list or Nutrition Facts label available at the point of selection.

Twenty months later, many of the issues we flagged regarding the labeling of these products have still not been addressed, and some new issues have emerged:

- Kellogg's Frosted Strawberry Pop Tarts from Safeway.com now displays a Nutrition Facts label, ingredients list, and allergen statement as the second picture after the principal display panel, after just one marketing image (Figure 1, Appendix B). However, in addition to this properly formatted Nutrition Facts label, the webpage also still includes an improperly formatted Nutrition Facts label under an "Ingredients" tab, and there are confusing inconsistencies between the two Nutrition Facts labels. For example, the label discloses that the product contains 30 grams of Total Sugars but a dash next to "Added Sugars" misleadingly implies that Pop Tarts contain no Added Sugars. On the contrary, the other Nutrition Facts label image shows that all 30 grams of Total Sugars come from Added Sugars.
- Nabisco's Chips Ahoy cookies from Walmart.com previously required shoppers to scroll through seven advertisements after the first product image before locating images of the Nutrition Facts label and ingredients list. The number of advertisements to scroll through has now increased to 12. Previously, the webpage showed an outdated version of the Nutrition Facts label (e.g., there was no line for Added Sugars) and a version of the ingredients list that did not match the ingredients listed for the same product on the manufacturer's website. Now the webpage includes two different Nutrition Facts labels that do not align (Figure 2, Appendix B). Both represent a serving size of 3 cookies (33g), but one states that the food contains 3g of Saturated Fat per serving (15% DV) and the other says 2.5g of Saturated Fat per serving (3% DV). Both state the food has 11 grams of [Total] Sugars, including 11 grams of Added Sugars, but one label correctly provides no percent DV for Total Sugars and 22% DV for Added Sugars, while the other states 0% DV for "Sugars" and does not provide a percent DV for Added Sugars. There are also discrepancies in micronutrient content (Iron and Potassium) between the two labels.
- General Mills' Cheerios from Target.com no longer displays an image modified to omit a required disclosure. However, the same product is still sold on other online platforms (e.g., Amazon.com) using the modified image of the principal display panel (Figure 3, Appendix B).
- Checkers and Rally's Famous Seasoned Fries on Amazon.com now displays an ingredients list at the point of selection but still does not display a Nutrition Facts label (Figure 4, Appendix B).

The continued use of inaccurate and incomplete label information for foods sold online underscores the need for FDA guidance for industry. Thank you for prioritizing these issues and working to ensure consumers have consistent access to complete and accurate nutrition, ingredient, and allergen information.

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Senior Policy Scientist
Center for Science in the Public Interest











November 10, 2021

Division of Dockets Management Food and Drug Administration Department of Health and Human Services 5630 Fishers Lane, Room 1061 Rockville, MD 20852

Re: FDA-2021-N-0929-0001; Food and Drug Administration New Era of Smarter Food Safety Summit on E-Commerce; Public Meeting; Request for Comments

The Center for Science in the Public Interest (CSPI),¹ Center for Digital Democracy (CDD),² Consumer Federation of America (CFA),³ and Consumer Reports⁴ respectfully submit this comment on labeling of foods sold through business-to-consumer e-commerce. We ask that FDA take swift action to ensure that consumers purchasing foods online have access to the same critical information that they would have when purchasing foods in brick-and-mortar restaurants and retailers.

Online food ordering has exploded in recent years. Even before the COVID-19 pandemic, \$1 out of every \$5 used to purchase food was spent online. During the pandemic, use of restaurant ordering apps and online grocery shopping have continued to grow rapidly. There is an urgent need for food labeling regulations to keep pace with consumer trends.

Since 2018, chain restaurants with 20 or more locations have been required by law to post calorie information at the point of sale, both in-store and on the internet. CSPI, CDD, CFA, Consumer Reports, and other consumer and health advocacy groups have previously urged the FDA to issue guidance ensuring this rule is enforced with respect to restaurants posting their menus on third party ordering platforms, like Grubhub, Doordash, or Uber Eats.

In addition to clarifying its rules with respect to online restaurant menus, we also urge the FDA to issue a guidance or voluntary rulemaking describing how and where nutrition, ingredients, and allergen information should be disclosed at the point of sale for packaged foods purchased from online retailers and platforms, such as Walmart, Instacart, and Amazon.

While many online retailers do make Nutrition Facts and ingredients information available, a study of top online retailers published in 2020 found that 15% of foods required to bear this information on their packages had no Nutrition Facts or ingredients information posted at the online point of sale. ¹⁰ Even when some of this information was available, it was often inaccurate, incomplete, or difficult to find.

For example, when shopping on Safeway.com, Kellogg's Frosted Strawberry Pop Tarts are a prominently featured item in the Breakfast & Cereal Products/Toaster Pastries category. When you click to purchase the Pop Tarts, you must scroll far down, past promotions for other products, to find any nutrition or ingredient information. The Nutrition Facts are unintuitively located under a tab labeled "Ingredients," making them difficult to find. Even worse, the Nutrition Facts label is inaccurate and incomplete (*see* Appendix Figure 1). A dash next to "Sugars" misleadingly suggests that Pop Tarts contain no Sugars, and the Nutrition Facts label does not include a line for Added Sugars. On the contrary, Frosted Strawberry

Pop Tarts contain 30 grams of sugars per serving, all of which are added sugars.¹² At the bottom of the product page is a disclosure from Safeway stating "We assume no liability for any inaccuracies/misstatements about Products listed on our website/app."¹³

As another example, Walmart.com requires a shopper considering Nabisco's Chips Ahoy cookies to scroll through seven advertisements after the first product image before locating images of the Nutrition Facts label and ingredients list. ¹⁴ Even then, both the Nutrition Facts label and ingredients information are outdated. The Nutrition Facts label has no line for added sugars and the ingredients list includes partially hydrogenated cottonseed oil, whereas the new product formulation contains canola oil and palm oil instead (*see* Appendix Figure 2). ¹⁵

In the example of General Mills Cheerios sold on Target.com, the product listing presents an image of the package with a health claim ("can help lower cholesterol as part of a heart healthy diet") but the image is altered to omit the required qualifier explaining the claim ("three grams of soluble fiber from whole grain oat foods, like Cheerios cereal, in a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. Cheerios provides 1.5 grams per serving") (*see* Appendix Figure 3). The Nutrition Facts label for the product is also outdated.

Finally, in the example of Checkers and Rally's Famous Seasoned Fries sold on Amazon.com, the product listing includes an image of the package with a "0g trans fat per serving" nutrient claim and marketing images, but no ingredients list or Nutrition Facts label. Below the product images, in the "Customer questions and answers" section, one customer asked about the product's ingredients and another responded with an ingredients list they reported "Stealing [...] from another website" (*see* Appendix Figure 4).

Providing partial or incomplete information about a product's nutrition, ingredients, and allergen risks can mislead consumers and deprive them of information critical to their health.

We urge FDA to issue guidance on how nutrition information should be displayed online at the point of sale, including the following points:

- 1. FDA should ensure online sellers present full Nutrition Facts information in the same format as on the products themselves.
- 2. FDA should ensure that nutrition, ingredients, and allergen information is readily accessible (including by removing any intervening marketing information and minimizing the number of "clicks" between the product listing and critical information).
- 3. FDA should ensure that nutrition, ingredients, and allergen information is presented in a format that makes it easy to read (for example, by providing an option to zoom in)
- 4. FDA should ensure that when an image of the front of package is presented, that image includes all statements required by law on the label, in a format that allows consumers to easily read each statement.
- 5. FDA should clarify that selective or incomplete presentations of nutrition, ingredient, or allergen information can be considered inaccurate or misleading.

Sincerely,

Center for Science in the Public Interest Center for Digital Democracy Consumer Federation of America Consumer Reports

 $\frac{https://www.amazon.com/gp/product/B01FMAWS98?pf_rd_r=7TY6JRV31EB8ZTAHKT0C\&pf_rd_p=1ab92b69-98d7-4842-a89b-ad387c54783f\&pd_rd_r=b3de8434-e94e-4faa-b84d-$

182c832c7eca&pd_rd_w=vyxIA&pd_rd_wg=7d4Nf&ref_=pd_gw_unk. Accessed November 8, 2021.

¹ Center for Science in the Public Interest (CSPI) is a non-profit consumer education and advocacy organization that has worked since 1971 to improve the public's health through better nutrition and safer food. The organization does not accept government or corporate grants and is supported by the roughly half million subscribers to its Nutrition Action publication. CSPI provides nutrition and food safety information directly to consumers, and has long advocated for legislation, regulation, and judicial rulings to ensure that foods are safe and clearly labeled.

² The Center for Digital Democracy's mission is to ensure that digital technologies serve and strengthen democratic values, institutions and processes. CDD strives to safeguard privacy and civil and human rights, as well as to advance equity, fairness, and community.

³ The Consumer Federation of America is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Today, more than 250 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors. CFA works to support food policies that promote transparency, empower consumers to make healthy choices, and ensure access to a safe and wholesome food supply.

⁴ Consumer Reports is a nonprofit organization that works for and with consumers for truth, transparency, and fairness in the marketplace. We use our independent and rigorous research, consumer insights, journalism, and policy expertise to inform people's purchase decisions, improve the products and services businesses deliver, and drive regulatory and fair competitive practices. Our work helps create a safer, fairer and more transparent marketplace.

⁵ Lienhard K. *FDA Eyes Food Labeling Updates Amid Rise in Online Food Purchases*. InsideHealthPolicy. July 15, 2021. https://insidehealthpolicy.com/daily-news/fda-eyes-food-labeling-updates-amid-rise-online-food-purchases. Accessed October 28, 2021.

⁶ Ahuja K, et al. *Ordering in: The rapid evolution of food delivery*. McKinsey & Company. September 22, 2021. https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/ordering-in-the-rapid-evolution-of-food-delivery. Accessed October 28, 2021.

⁷ Redman R. *Increased use of online grocery shopping 'here to stay*.' Supermarket News. August 25, 2021. https://www.supermarketnews.com/online-retail/increased-use-online-grocery-shopping-here-stay. Accessed November 3, 2021.

⁸ U.S. Food & Drug Administration. Menu Labeling Requirements. https://www.fda.gov/food/food-labeling-nutrition/menu-labeling-requirements. Accessed October 28, 2021.

⁹ Center for Science in the Public Interest, et al. Letter Re: Availability of Nutrition Information for Foods from Chain Restaurants Purchased through Third Party Platforms. April 1, 2021. https://cspinet.org/sites/default/files/attachment/Letter%20to%20FDA%20on%20TPP%20Menus_final2.pdf. Accessed October 28, 2021.

¹⁰ Olzenak K, et al. How online grocery stores support consumer nutrition information needs. *Journal of Nutrition Education and Behavior*. 2020;52(10):952-957.

¹¹ Safeway.com. Pop-Tarts Toaster Pastries Breakfast Foods Frosted Strawberry 8 Count-13.5 Oz. https://www.safeway.com/shop/product-details.960541033.html. Accessed October 28, 2021.

¹² Smart Label. Kellogg's Pop-Tarts- Frosted Strawberry Pop-Tarts.

https://smartlabel.kelloggs.com/Product/Index/00038000317316. Accessed October 28, 2021.

¹³ Safeway.com. Pop-Tarts Toaster Pastries Breakfast Foods Frosted Strawberry 8 Count-13.5 Oz. https://www.safeway.com/shop/product-details.960541033.html. Accessed October 28, 2021.

¹⁴ Walmart.com. Chips Ahoy! Original Chocolate Chip Cookies, Family Size, 18.2 Oz. https://www.walmart.com/ip/Chips-Ahoy-Original-Chocolate-Chip-Cookies-Family-Size-18-2-Oz/23658443?athbdg=L1300. Accessed October 28, 2021.

¹⁵ Mondelez International. Chips Ahoy! Original Chocolate Chip Cookies 18.2 Oz.

https://www.snackworks.com/Products/ProductDetails?ProductId=00044000033385. Accessed October 28, 2021.

¹⁶ Target.com. Cheerios Breakfast Cereal- 8.9oz- General Mills. https://www.target.com/p/cheerios-breakfast-cereal-8-9oz-general-mills/-/A-39602815#lnk=sametab. Accessed October 28, 2021.

¹⁷ Image of Cheerios box photographed in-store by CSPI staff in Fall 2021 (*see* Appendix Figure 3).

¹⁸ Amazon.com. Checkers and Rally's Famous Seasoned Fries, 28 oz (Frozen).

Appendix

Nutrition Facts Serving Size: Servings Per Container: 4		
Calories	Amount Per Serving 370	% Daily Value
Calories From Fat	0	
Total Fat	9g	12%
Saturated Fat	3g	15%
Trans Fat	0g	
Polyunsaturated Fat	(-)	
Monounsaturated Fat	(-)	
Cholesterol	Omg	0%
Sodium	320mg	14%
Potassium	50mg	096
Total Carbohydrate	70g	25%
Dietary Fiber	1g	496
Sugars	(-)	
Protein	3g	0%
Vitamin A		(-)
Vitamin C		(-)
Calcium		0%
Iron		8%

Nutrition Facts

Servings Per Container 1
Serving Size 2 Pastries (96 g)

Amount Per Serving		
Calories		370
	Amount/Serving	% Daily Value
Total Fat	9 g	12%
Saturated Fat	3 g	15%
Trans Fat	0 g	
Polyunsaturated Fat	3.5 g	
Monounsaturated Fat	2 g	
Cholesterol	0 mg	0%
Sodium	320 mg	14%
Total Carbohydrate	70 g	25%
Dietary Fiber	1 g	4%
Total Sugars	30 g	
Includes 30g Added Sugars	30 g	60%
Protein	3 g	
Vitamin D	0 mcg	0%
Calcium	10 mg	0%
Iron	1.5 mg	8%
Potassium	50 mg	0%
Thiamin		4%
Riboflavin		10%
Niacin		10%
Folate (25 mcg Folic Acid)	40 mcg	10%

Figure 1. Online Nutrition Facts labels for Kellogg's Frosted Strawberry Pop Tarts at Safeway.com (Left) and SmartLabel.Kelloggs.com (Right), both accessed on October 28, 2021.

15 servings per container		
Serving Size	3 Cookies (33g	
Amount per serving		
Calories	160	
	% Daily Value	
Total Fat 8.00000g	12%	
Saturated Fat 2.5g	13%	
Trans Fat Og		
Polyunsaturated Fat 2.5g		
Monounsaturated Fat 2g		
Cholesterol Omg	0%	
Sodium 110mg	5%	
Total Carbohydrate 22.00000g	7%	
Dietary Fiber 1g	3%	
Sugars 11g		
Protein 1.00000g		
Vitamin A	0%	
Vitamin C	0%	
Calcium	0%	
Potassium 40mg	19	
Iron	6%	





Ingredients:

UNBLEACHED ENRICHED FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE {VITAMIN B1}, RIBOFLAVIN {VITAMIN B2}, FOLIC ACID), SEMISWEET CHOCOLATE CHIPS (SUGAR, CHOCOLATE, COCOA BUTTER, DEXTROSE, MILK, SOY LECITHIN), SUGAR, CANOLA OIL, PALM OIL, HIGH FRUCTOSE CORN SYRUP, LEAVENING (BAKING SODA, AMMONIUM PHOSPHATE), SALT, ARTIFICIAL FLAVOR, CARAMEL COLOR, NATURAL FLAVOR.

Figure 2. Online Nutrition Facts labels and ingredients lists for Nabisco's Chips Ahoy! Cookies at Walmart.com (Left) and manufacturer's website Snackworks.com (Right), both accessed on October 28, 2021.





Figure 3. Online image of General Mills Cheerios at Target.com, accessed on October 28, 2021 (Left) and image of Cheerios box photographed in-store by CSPI staff in Fall 2021 (Right).



Customer questions & answers

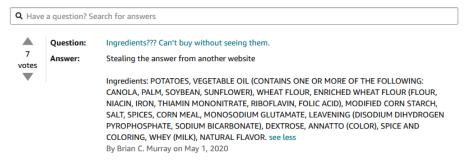
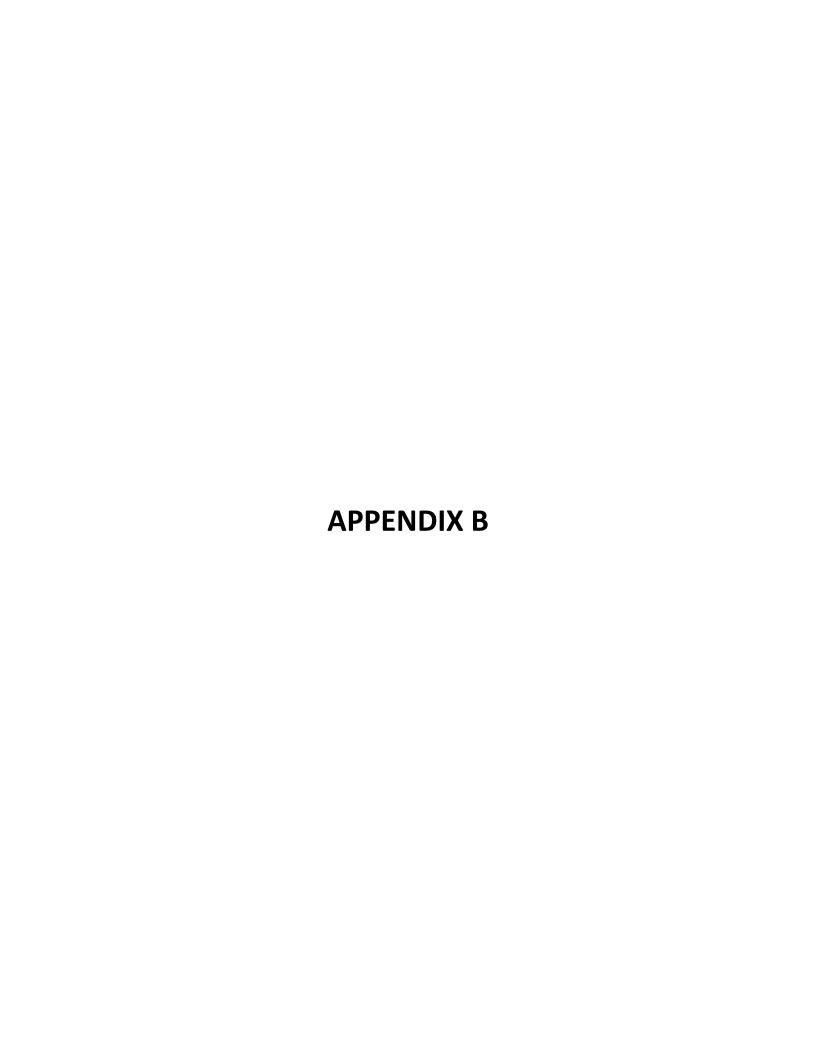
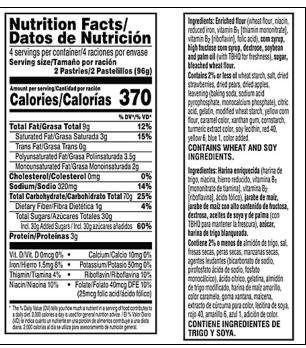


Figure 4: Online image of Checkers and Rally's Famous Seasoned Fries at Amazon.com (Top) and image from the same webpage of one customer question and answer (Bottom), accessed on November 8, 2021.







Details	Ingredients	Reviews	More
Nutrition Facts			
Serving Size :	2pastries		
Servings Per Container :	4		
Calories		370	(-)
Calories from Fat		(-)	(-)
Total Fat		9g	12%
Saturated Fat		3g	15%
Trans Fat		Og	(-)
Polyunsaturated Fat		3.5g	(-)
Monounsaturated Fat		2g	(-)
Cholesterol		0mg	0%
Sodium		320mg	14%
Potassium		50mg	0%
Total Carbohydrate		70g	25%
Dietary Fiber		1g	4%
Total Sugars		30g	(-)
Added Sugars		(-)	(-)
Protein		3g	(-)
Calcium		10mg	0%
Iron		1.5mg	8%

Figure 1. Online Nutrition Facts labels for Kellogg's Frosted Strawberry Pop Tarts at Safeway.com, accessed on July 21, 2023.

https://www.safeway.com/shop/product-details.960541033.html



about 15 servings per container		
Serving Size	3 cookies (33g)	
Amount per serving		
Calories	160	
	% Daily Value®	
Total Fat 8g	10%	
Saturated Fat 2.5g	3%	
Trans Fat Og	0%	
Polyunsaturated Fat 2.5g		
Monounsaturated Fat 2g		
Cholesterol Omg	0%	
Sodium 110mg	5%	
Total Carbohydrate 22g	8%	
Dietary Fiber 1g	3%	
Sugars 11g	0%	
Includes Added Sugars 11g		
Protein 1g		
Vitamin A 0	0%	
Vitamin C 0	0%	
Calcium mg	0%	
Potassium 40mg	1%	
Iron 0	6%	
Vitamin D 0.00mcg	0%	

Figure 2. Online Nutrition Facts labels and ingredients lists for Nabisco's Chips Ahoy! Cookies at Walmart.com, accessed on July 21, 2023.

 $\frac{https://www.walmart.com/ip/Chips-Ahoy-Original-Chocolate-Chip-Cookies-Family-Size-18-2-Oz/23658443?athbdg=L1300$



Cheerios Heart Healthy Cereal, Gluten Free Cereal with Whole Grain Oats, 8.9 OZ

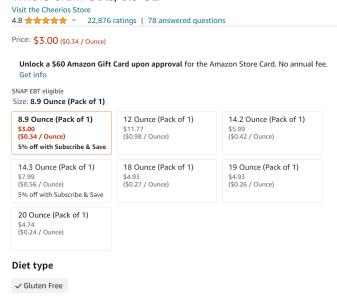


Figure 3. Online image of General Mills Cheerios at Amazon.com, accessed on July 23, 2023.

https://www.amazon.com/Cheerios-Breakfast-Cereal-Gluten-

Free/dp/B019Z95UCO/ref=asc df B019Z95UCO/?tag=hyprod-

 $\frac{20\&linkCode=df0\&hvadid=459618558453\&hvpos=\&hvnetw=g\&hvrand=12959334195404241846\&hvpone=\&hvptwo=\&hvqmt=\&hvdev=c\&hvdvcmdl=\&hvlocint=\&hvlocphy=1018127\&hvtargid=pla-920699912622\&psc=1$

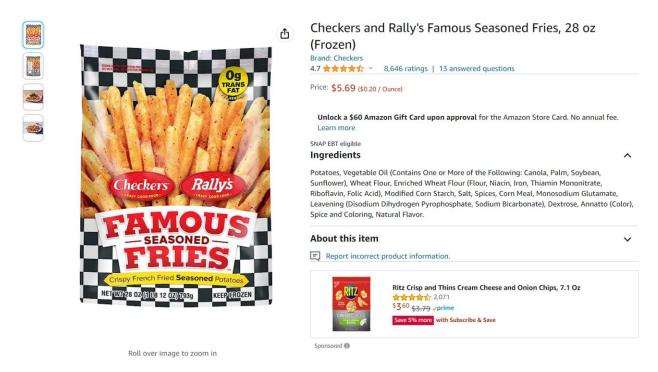


Figure 4. Online image of Checkers and Rally's Famous Seasoned Fries at Amazon.com, accessed July 23, 2023.

https://www.amazon.com/gp/product/B01FMAWS98?pf_rd_r=7TY6JRV31EB8ZTAHKT0C&pf_rd_p=1ab9 2b69-98d7-4842-a89b-ad387c54783f&pd_rd_r=b3de8434-e94e-4faa-b84d-182c832c7eca&pd_rd_w=vyxIA&pd_rd_wg=7d4Nf&ref_=pd_gw_unk_