



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),<sup>1</sup> Center for Digital Democracy (CDD),<sup>2</sup> Consumer Federation of America (CFA),<sup>3</sup> and Consumer Reports<sup>4</sup> 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.<sup>5</sup> During the pandemic, use of restaurant ordering apps and online grocery shopping have continued to grow rapidly.<sup>6,7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.”<sup>13</sup>

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.<sup>14</sup> 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).<sup>15</sup>

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).<sup>16,17</sup> 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.<sup>18</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

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

<sup>9</sup> 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](https://cspinet.org/sites/default/files/attachment/Letter%20to%20FDA%20on%20TPP%20Menus_final2.pdf). Accessed October 28, 2021.

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

<sup>11</sup> 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.

<sup>12</sup> Smart Label. Kellogg's Pop-Tarts- Frosted Strawberry Pop-Tarts. <https://smartlabel.kelloggs.com/Product/Index/00038000317316>. Accessed October 28, 2021.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> Mondelez International. Chips Ahoy! Original Chocolate Chip Cookies 18.2 Oz. <https://www.snackworks.com/Products/ProductDetails?ProductId=00044000033385>. Accessed October 28, 2021.

<sup>16</sup> 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.

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

<sup>18</sup> Amazon.com. Checkers and Rally's Famous Seasoned Fries, 28 oz (Frozen). [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=vyyIA&pd\\_rd\\_wg=7d4Nf&ref=ped\\_gw\\_unk](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=vyyIA&pd_rd_wg=7d4Nf&ref=ped_gw_unk). Accessed November 8, 2021.

## Appendix

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

  

Nutrition Facts		
Servings Per Container 1 <b>Serving Size 2 Pastries (96 g)</b>		
Amount Per Serving		
<b>Calories</b>		
		<b>370</b>
	Amount/Serving	% Daily Value*
<b>Total Fat</b>	9 g	12%
Saturated Fat	3 g	15%
Trans Fat	0 g	
Polyunsaturated Fat	3.5 g	
Monounsaturated Fat	2 g	
<b>Cholesterol</b>	0 mg	0%
<b>Sodium</b>	320 mg	14%
<b>Total Carbohydrate</b>	70 g	25%
Dietary Fiber	1 g	4%
Total Sugars	30 g	
<b>Includes 30g Added Sugars</b>	30 g	60%
<b>Protein</b>	3 g	
<b>Vitamin D</b>	0 mcg	0%
<b>Calcium</b>	10 mg	0%
<b>Iron</b>	1.5 mg	8%
<b>Potassium</b>	50 mg	0%
<b>Thiamin</b>		4%
<b>Riboflavin</b>		10%
<b>Niacin</b>		10%
<b>Folate</b> (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.

**Nutrition facts**

Refer to the product label for full dietary information, which may be available as an alternative product image.

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	0g	
Polyunsaturated Fat	2.5g	
Monounsaturated Fat	2g	
Cholesterol	0mg	0%
Sodium	110mg	5%
Total Carbohydrate	22.00000g	7%
Dietary Fiber	1g	3%
Sugars	1g	
Protein	1.00000g	
Vitamin A		0%
Vitamin C		0%
Calcium		0%
Potassium	40mg	1%
Iron		6%

\* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet.

Calories per gram:  
Fat 9 • Carbohydrate 4 • Protein 4

**Nutrition Facts/Datos de Nutrición**

about 16 servings per container/cerca de 16 raciones por envase

**Serving size / Tamaño por ración** 3 cookies/galletas (33g)

Amount per serving/Cantidad por ración

**Calories/Calorías** 160

% Daily Value\*/Valor Diario\*

<b>Total Fat/Grasa Total</b>	8g	<b>10%</b>
Saturated Fat/Grasa Saturada	2.5g	<b>13%</b>
Trans Fat/Grasa Trans	0g	
<b>Cholesterol/Colesterol</b>	0mg	<b>0%</b>
<b>Sodium/Sodio</b>	105mg	<b>5%</b>
<b>Total Carbohydrate/Carbohidrato Total</b>	22g	<b>8%</b>
Dietary Fiber/Fibra Dietética	<1g	<b>3%</b>
Total Sugars/Azúcares Total	11g	
Includes 11g Added Sugars / Incluye 11g Azúcares Añadidos		<b>22%</b>
<b>Protein/Proteínas</b>	1g	
Vitamin D/Vitamina D	0mcg	0%
Calcium/Calcio	0mg	0%
Iron/Hierro	1.4mg	8%
Potassium/Potasio	50mg	0%

\* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.  
\* El % Valor Diario (VD) le indica cuánto un nutriente en una porción de alimentos contribuye a una dieta diaria. 2,000 calorías al día se utiliza para asesoramiento de nutrición general.

**MADE WITH REAL CHOCOLATE CHIPS!**

**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, SOY LECITHIN), SUGAR, SOYBEAN OIL, PARTIALLY HYDROGENATED COTTONSEED OIL, HIGH FRUCTOSE CORN SYRUP, LEAVENING (BAKING SODA, AMMONIUM PHOSPHATE), SALT, WHEY (FROM MILK), NATURAL AND ARTIFICIAL FLAVOR, CARAMEL COLOR.

**CONTAINS: WHEAT, SOY, MILK.**



**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).



Checkers and Rally's Famous Seasoned Fries, 28 oz (Frozen)

★★★★☆ ~ 4,793

\$3<sup>79</sup> (\$0.14/Ounce) ~~\$4.39~~

SNAP EBT eligible

fresh FREE 2-hour delivery on orders over \$35

### Customer questions & answers

Have a question? Search for answers

▲  
7  
votes  
▼

**Question:** Ingredients??? Can't buy without seeing them.

**Answer:** Stealing the answer from another website

Ingredients: POTATOES, VEGETABLE OIL (CONTAINS ONE OR MORE OF THE FOLLOWING: CANOLA, PALM, SOYBEAN, SUNFLOWER), WHEAT FLOUR, ENRICHED WHEAT FLOUR (FLOUR, NIACIN, IRON, THIAMIN MONONITRATE, RIBOFLAVIN, FOLIC ACID), MODIFIED CORN STARCH, SALT, SPICES, CORN MEAL, MONOSODIUM GLUTAMATE, LEAVENING (DISODIUM DIHYDROGEN PYROPHOSPHATE, SODIUM BICARBONATE), DEXTROSE, ANNATTO (COLOR), SPICE AND COLORING, WHEY (MILK), NATURAL FLAVOR. [see less](#)

By Brian C. Murray on May 1, 2020

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.