

identity, and is subject to the requirements for label declaration of ingredients for sweet chocolate in §163.123, except that:

(1) In the preparation of the product, cocoa or a mixture of cocoa and chocolate liquor is used in such quantity that the finished food contains not less than 6.8 percent by weight of nonfat cacao solids, calculated on a moisture-free basis;

(2) One or more optional ingredients specified in paragraph (b) of this section are used; and

(3) The requirement in §163.123(a)(2) limiting the total milk solids content to less than 12 percent by weight does not apply.

(b) *Optional ingredients.* (1) Breakfast cocoa, cocoa, lowfat cocoa;

(2) Chocolate liquor;

(3) Safe and suitable vegetable derived fats, oils, and stearins other than cacao fat. The fats, oils, and stearins may be hydrogenated;

(4) Safe and suitable dairy-derived ingredients; and

(5) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "sweet cocoa and vegetable fat coating". Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food, e.g., "sweet cocoa and _____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used.

§163.153 Sweet chocolate and vegetable fat coating.

(a) *Description.* Sweet chocolate and vegetable fat coating is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for sweet chocolate in §163.123, except that one or more optional ingredients specified in paragraph (b) of this section are used. Compliance with the requirement in §163.123(a)(2) limiting the total milk solids content to less than 12 percent by weight shall be calculated by including only those dairy ingredients referred to in §163.123(b)(4), exclusive of any added sweetener or other dairy-derived ingredient that is added beyond

that amount that is normally present in the specified dairy ingredient.

(b) *Optional ingredients.* (1) Safe and suitable vegetable derived fats, oils, and stearins other than cacao fat. The fats, oils, and stearins may be hydrogenated;

(2) Safe and suitable dairy-derived ingredients; and

(3) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "sweet chocolate and vegetable fat coating". Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food, e.g., "sweet chocolate and _____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used.

§ 163.155 Milk chocolate and vegetable fat coating.

(a) *Description.* Milk chocolate and vegetable fat coating is the food that conforms to the standard of identity, and is subject to the requirements for label declaration of ingredients for milk chocolate in §163.130 or skim milk chocolate in §163.140, except that one or more optional ingredients specified in paragraph (b) of this section are used. Compliance with the requirement in §163.130(a)(2) that the product contains not less than 12 percent by weight of nonfat milk solids shall be calculated using only those dairy ingredients referred to in §163.130(b)(4), exclusive of any added sweetener or other dairy-derived ingredient that is added beyond that amount that is normally present in the specified dairy ingredient.

(b) *Optional ingredients.* (1) Safe and suitable vegetable derived oils, fats, and stearins other than cacao fat. The oils, fats, and stearins may be hydrogenated;

(2) Safe and suitable dairy-derived ingredients; and

(3) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "milk chocolate and vegetable fat coating" or "skim milk chocolate

and vegetable fat coating”, as appropriate. Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food, e.g., “milk chocolate and _____ oil coating”, the blank being filled in with the common or usual name of the specific vegetable fat used.

PART 164—TREE NUT AND PEANUT PRODUCTS

Subpart A [Reserved]

Subpart B—Requirements for Specific Standardized Tree Nut and Peanut Products

Sec.

164.110 Mixed nuts.

164.120 Shelled nuts in rigid or semirigid containers.

164.150 Peanut butter.

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Subpart A [Reserved]

Subpart B—Requirements for Specific Standardized Tree Nut and Peanut Products

§ 164.110 Mixed nuts.

(a) Mixed nuts is the food consisting of a mixture of four or more of the optional shelled tree nut ingredients, with or without one or more of the optional shelled peanut ingredients, of the kinds prescribed by paragraph (b) of this section; except that when 2 ounces or less of the food is packed in transparent containers, three or more of the optional tree nut ingredients shall be present. Each such kind of nut ingredient when used shall be present in a quantity not less than 2 percent and not more than 80 percent by weight of the finished food. For purposes of this section, each kind of tree nut and peanut is an optional ingredient that may be prepared by any suitable method in accordance with good manufacturing practice. The finished food may contain one or more of the optional nonnut ingredients provided for in paragraph (c) of this section.

(b) The optional shelled nut ingredients referred to in paragraph (a) of this section are:

(1) Almonds, black walnuts, Brazil nuts, cashews, English walnuts (alternatively “walnuts”), filberts, pecans, and other suitable kinds of tree nuts.

(2) Peanuts of the Spanish, Valencia, Virginia, or similar varieties, or any combination of two or more such varieties.

(c) The optional nonnut ingredients referred to in paragraph (a) of this section consist of suitable substances that are not food additives as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act; or if they are food additives as so defined, they are used in conformity with regulations established pursuant to section 409 of the act. Nonnut ingredients that perform a useful function are regarded as suitable, except that color additives are not suitable ingredients of the food.

(d) The name of the food is “mixed nuts”. If the percentage of a single tree nut ingredient or the total peanut content by weight of the finished food exceeds 50 percent but not 60 percent, the statement “contains up to 60% _____” or “contains 60% _____” or “60% _____” shall immediately follow the name “mixed nuts” and shall appear on the same background, be of the same color or, in the case of multicolors, in the color showing distinct contrast with the background, and be in letters not less than one-half the height of the largest letter in the words “mixed nuts”. The blank is to be filled in with the appropriate name of the predominant nut ingredient; for example, “contains up to 60% pecans” or “contains up to 60% Spanish peanuts”. The numbers “70” or “80” shall be substituted for the number “60” when the percentage of the predominant nut ingredient exceeds 60 but not 70, or exceeds 70 but not 80, respectively. Compliance with the requirements for percentage of nut ingredients of this section and the fill of container requirements of § 164.120(c) will be determined by the following procedure:

(1) Take at random from a lot, in the case of containers bearing a weight declaration of 16 ounces or less, at least 24 containers, and for containers bearing a weight declaration of more