

Food and Drug Administration, HHS

§ 163.110

PART 163—CACAO PRODUCTS

Subpart A—General Provisions

Sec.

163.5 Methods of analysis.

Subpart B—Requirements for Specific Standardized Cacao Products

- 163.110 Cacao nibs.
- 163.111 Chocolate liquor.
- 163.112 Breakfast cocoa.
- 163.113 Cocoa.
- 163.114 Lowfat cocoa.
- 163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.
- 163.123 Sweet chocolate.
- 163.124 White chocolate.
- 163.130 Milk chocolate.
- 163.135 Buttermilk chocolate.
- 163.140 Skim milk chocolate.
- 163.145 Mixed dairy product chocolates.
- 163.150 Sweet cocoa and vegetable fat coating.
- 163.153 Sweet chocolate and vegetable fat coating.
- 163.155 Milk chocolate and vegetable fat coating.

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SOURCE: 58 FR 29529, May 21, 1993, unless otherwise noted.

Subpart A—General Provisions

§ 163.5 Methods of analysis.

Shell and cacao fat content in cacao products shall be determined by the following methods of analysis prescribed in “Official Methods of Analysis of the Association of Official Analytical Chemists,” which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877, or may be examined at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(a) Shell content—12th ed. (1975), methods 13.010–13.014, under the heading “Shell in Cacao Nibs—Official Final Action,” pp. 208–210.

(b) Fat content—15th ed. (1990), method 963.15, under the heading “Fat in

Cacao Products—Soxhlet Extraction Method—Final Action, 1973,” pp. 770–771.

[58 FR 29529, May 21, 1993, as amended at 63 FR 14035, Mar. 24, 1998]

Subpart B—Requirements for Specific Standardized Cacao Products

§ 163.110 Cacao nibs.

(a) *Description.* (1) Cacao nibs is the food prepared by removing the shell from cured, cleaned, dried, and cracked cacao beans. The cacao shell content is not more than 1.75 percent by weight, calculated on an alkali free basis, as determined by the method prescribed in § 163.5(a).

(2) The cacao nibs, or the cacao beans from which they are prepared, may be processed by heating with one or more of the optional alkali ingredients specified in paragraph (b)(1) of this section.

(3) The cacao nibs, or the cacao beans from which they are prepared, as appropriate, may be further processed with one or more of the optional neutralizing agents specified in paragraph (b)(2) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Alkali ingredients. Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, added as such, or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such, or before shelling from the cacao beans, the total quantity of alkali ingredients used is not greater in neutralizing value (calculated from the respective combined weights of the alkali ingredients used) than the neutralizing value of 3 parts by weight of anhydrous potassium carbonate.

(2) Neutralizing agents. Phosphoric acid, citric acid, and *L*-tartaric acid, added as such, or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such, or before shelling from the cacao beans, the total quantity of phosphoric acid used is not greater than 0.5 part by weight, expressed as P₂O₅. The total amount, singly or in combination, of citric acid

and *L*-tartaric acid is not greater than 1.0 part by weight.

(c) *Nomenclature.* The name of the food is “cacao nibs”, “cocoa nibs”, or “cracked cocoa”. (1) When the cacao nibs, or the cacao beans from which they are prepared, are processed with alkali ingredients specified in paragraph (b)(1) of this section, the name of the food shall be accompanied by the statement “Processed with alkali” or “Processed with _____”, the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When the cacao nibs, or the cacao beans from which they are prepared, are processed with neutralizing agents specified in paragraph (b)(2) of this section, the name of the food shall be accompanied by the statement “Processed with neutralizing agent” or “Processed with _____”, the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in paragraphs (c)(1) and (c)(2) of this section shall precede or follow the name without intervening printed or graphic matter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 163.111 Chocolate liquor.

(a) *Description.* (1) Chocolate liquor is the solid or semiplastic food prepared by finely grinding cacao nibs. The fat content of the food may be adjusted by adding one or more of the optional ingredients specified in paragraph (b)(1) of this section to the cacao nibs. Chocolate liquor contains not less than 50 percent nor more than 60 percent by weight of cacao fat as determined by the method prescribed in § 163.5(b).

(2) Optional alkali ingredients specified in paragraph (b)(2) of this section may be used as such in the preparation of chocolate liquor under the conditions and limitations specified in § 163.110(b)(1).

(3) Optional neutralizing agents specified in paragraph (b)(3) of this section may be used as such in the preparation of the chocolate liquor under the conditions and limitations specified in § 163.110(b)(2).

(4) Chocolate liquor may be spiced, flavored, or seasoned with one or more of the ingredients listed in paragraphs (b)(4), (b)(5), and (b)(6) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat and cocoas (breakfast cocoa, cocoa, or lowfat cocoa);

(2) Alkali ingredients. Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, added as such, or in aqueous solution;

(3) Neutralizing agents. Phosphoric acid, citric acid, and *L*-tartaric acid, added as such, or in aqueous solution;

(4) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(5) Butter or milkfat; or

(6) Salt.

(c) *Nomenclature.* The name of the food is “chocolate liquor”, “chocolate”, “unsweetened chocolate”, “bitter chocolate”, “baking chocolate”, “cooking chocolate”, “chocolate coating”, or “unsweetened chocolate coating”.

(1) When any optional alkali ingredient specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement “Processed with alkali” or “Processed with _____”, the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(3) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the

statement “Processed with neutralizing agent” or “Processed with _____”, the blank being filled in with the common or usual name of the specific neutralizing ingredient used in the food.

(3) When one or more spices, flavorings, or seasonings specified in paragraphs (b)(4) and (b)(5) of this section are used in the chocolate liquor, the label shall bear an appropriate statement, e.g., “Spice added”, “Flavored with _____”, “Seasoned with _____”, or “With _____ added”, the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this section, showing optional ingredients used, shall precede or follow the name without intervening printed or graphic matter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 163.112 Breakfast cocoa.

(a) *Description.* (1) Breakfast cocoa is the food prepared by pulverizing the material remaining after part of the cacao fat has been removed from ground cacao nibs. Breakfast cocoa contains not less than 22 percent by weight of cacao fat as determined by the method prescribed in § 163.5(b).

(2) Optional alkali ingredients specified in paragraph (b)(1) of this section may be used as such in the preparation of breakfast cocoa under the conditions and limitations specified in § 163.110(b)(1).

(3) Optional neutralizing agents specified in paragraph (b)(2) of this section may be used as such in the preparation of the breakfast cocoa under the conditions and limitations specified in § 163.110(b)(2).

(4) Breakfast cocoa may be spiced, flavored, or seasoned with one or more of the ingredients listed in paragraphs (b)(3) and (b)(4) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Alkali ingredients. Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, used as such, or in aqueous solution;

(2) Neutralizing agents. Phosphoric acid, citric acid and L-tartaric acid, used as such, or in aqueous solution;

(3) Spices, natural and artificial flavorings, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter; or

(4) Salt.

(c) *Nomenclature.* The name of the food is “breakfast cocoa”, or “high fat cocoa”.

(1) When any optional alkali ingredient specified in paragraph (b)(1) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompanied by the statement “Processed with alkali”, or “Processed with _____”, the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompanied by the statement “Processed with neutralizing agent” or “Processed with _____”, the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section are used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., “Spice added”, “Flavored with _____”, or “With _____ added”, the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

§ 163.113

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow the name without intervening printed or graphic matter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 163.113 Cocoa.

(a) *Description.* Cocoa is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for breakfast cocoa in § 163.112, except that the cacao fat content is less than 22 percent, but not less than 10 percent by weight, as determined by the method prescribed in § 163.5(b).

(b) *Nomenclature.* The name of the food is “cocoa” or “medium fat cocoa”.

§ 163.114 Lowfat cocoa.

(a) *Description.* Lowfat cocoa is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for breakfast cocoa in § 163.112, except that the cacao fat content is less than 10 percent by weight, as determined by the method prescribed in § 163.5(b).

(b) *Nomenclature.* The name of the food is “lowfat cocoa”.

§ 163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.

(a) *Description.* Cocoa with dioctyl sodium sulfosuccinate for manufacturing is the food additive complying with the provisions prescribed in § 172.520 of this chapter. It conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients, for breakfast cocoa in § 163.112, or for cocoa in § 163.113, or for lowfat cocoa in § 163.114, except that the food additive contains dioctyl so-

21 CFR Ch. I (4–1–20 Edition)

dium sulfosuccinate (complying with the requirements of § 172.810 of this chapter, including the limit of not more than 0.4 percent by weight of the finished food additive).

(b) *Nomenclature.* The name of the food additive is “cocoa with dioctyl sodium sulfosuccinate for manufacturing” to which is added any modifier of the word “cocoa” required by the definition and standard of identity to which the food additive otherwise conforms. When the food additive is used in a fabricated food, the phrase “for manufacturing” may be omitted from any declaration of ingredients required under § 101.4 of this chapter.

§ 163.123 Sweet chocolate.

(a) *Description.* (1) Sweet chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more optional nutritive carbohydrate sweeteners, and may contain one or more of the other optional ingredients specified in paragraph (b) of this section.

(2) Sweet chocolate contains not less than 15 percent by weight of chocolate liquor complying with the requirements of § 163.111, as calculated by subtracting from the weight of the chocolate liquor used the weight of the cacao fat therein and the weights therein of any alkali, neutralizing, and seasoning ingredients, and multiplying the remainder by 2.2, dividing the result by the weight of the finished sweet chocolate, and multiplying the quotient by 100. The finished sweet chocolate contains less than 12 percent by weight of total milk solids based on those dairy ingredients specified in paragraph (b)(4) of this section, 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.

(3) Semisweet chocolate or bittersweet chocolate is sweet chocolate that contains not less than 35 percent by weight of chocolate liquor complying with the requirements of § 163.111 and calculated in the same manner as set forth in paragraph (a)(2) of this section.

(4) Cacao fat is determined by the method prescribed in § 163.5(b).

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

- (1) Cacao fat;
- (2) Nutritive carbohydrate sweeteners;
- (3) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;
- (4) Dairy ingredients:
 - (i) Cream, milkfat, butter;
 - (ii) Milk, concentrated milk, evaporated milk, sweetened condensed milk, dried milk;
 - (iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk;
 - (iv) Concentrated buttermilk, dried buttermilk; and
 - (v) Malted milk; or
- (5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* The name of the food is "sweet chocolate", "sweet chocolate coating", "semisweet chocolate", "semisweet chocolate coating", "bittersweet chocolate", or "bittersweet chocolate coating", as appropriate.

(1) When optional alkalizing ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate was prepared, the label shall bear the statement "Processed with alkali", or "Processed with _____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate was prepared, the label shall bear the statement "Processed with neutralizing agents", or "Processed with _____", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section are used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with _____",

or "With _____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 163.124 White chocolate.

(a) *Description.* (1) White chocolate is the solid or semiplastic food prepared by intimately mixing and grinding cacao fat with one or more of the optional dairy ingredients specified in paragraph (b)(2) of this section and one or more optional nutritive carbohydrate sweeteners and may contain one or more of the other optional ingredients specified in paragraph (b) of this section. White chocolate shall be free of coloring material.

(2) White chocolate contains not less than 20 percent by weight of cacao fat as calculated by subtracting from the weight of the total fat the weight of the milkfat, dividing the result by the weight of the finished white chocolate, and multiplying the quotient by 100. The finished white chocolate contains not less than 3.5 percent by weight of milkfat and not less than 14 percent by weight of total milk solids, calculated by using only those dairy ingredients specified in paragraph (b)(2) of this section, and not more than 55 percent by weight nutritive carbohydrate sweetener.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

- (1) Nutritive carbohydrate sweeteners;
- (2) Dairy ingredients:

- (i) Cream, milkfat, butter;
- (ii) Milk, dry whole milk, concentrated milk, evaporated milk, sweetened condensed milk;
- (iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk;
- (iv) Concentrated buttermilk, dried buttermilk; and
- (v) Malted milk;

(3) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.5 percent by weight;

(4) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(5) Antioxidants; and

(6) Whey or whey products, the total amount of which does not exceed 5 percent by weight.

(c) *Nomenclature.* The name of the food is “white chocolate” or “white chocolate coating.” When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(4) of this section are used, the label shall bear an appropriate statement, e.g., “Spice added”, “Flavored with _____”, or “With _____ added”, the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with §101.22 of this chapter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

[67 FR 62177, Oct. 4, 2002]

§ 163.130 Milk chocolate.

(a) *Description.* (1) Milk chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more of the optional dairy ingredients and one or more optional nutritive carbohydrate sweeteners, and may contain one or more of the other optional ingredients specified in paragraph (b) of this section.

(2) Milk chocolate contains not less than 10 percent by weight of chocolate liquor complying with the require-

ments of §163.111 as calculated by subtracting from the weight of the chocolate liquor used the weight of cacao fat therein and the weights of alkali, neutralizing and seasoning ingredients, multiplying the remainder by 2.2, dividing the result by the weight of the finished milk chocolate, and multiplying the quotient by 100. The finished milk chocolate contains not less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of total milk solids based on those dairy ingredients specified in paragraph (b)(4) of this section, 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.* The following safe and suitable ingredients may be used:

(1) Cacao fat;

(2) Nutritive carbohydrate sweeteners;

(3) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(4) Dairy ingredients:

(i) Cream, milkfat, butter;

(ii) Milk, concentrated milk, evaporated milk, sweetened condensed milk, dried milk; and

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk; or

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* The name of the food is “milk chocolate” or “milk chocolate coating”.

(1) When optional alkali ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement “Processed with alkali”, or “Processed with _____”, the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with neutralizing agents", or "Processed with _____", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section are used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with _____", or "With _____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 163.135 Buttermilk chocolate.

(a) *Description.* Buttermilk chocolate 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, except that:

(1) The optional dairy ingredients are limited to sweet cream buttermilk, concentrated sweet cream buttermilk, dried sweet cream buttermilk, and any combination of these; and

(2) The finished buttermilk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of sweet cream buttermilk solids based on those dairy ingredients specified in paragraph (a)(1) of this section, 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) *Nomenclature.* The name of the food is "buttermilk chocolate", "buttermilk chocolate coating", "sweet buttermilk chocolate", "sweet buttermilk chocolate coating", "sweet cream buttermilk chocolate", or "sweet cream buttermilk chocolate coating".

§ 163.140 Skim milk chocolate.

(a) *Description.* Skim milk chocolate 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, except that:

(1) The optional dairy ingredients are limited to skim milk, evaporated skim milk, concentrated skim milk, sweetened condensed skim milk, nonfat dry milk, and any combination of these; and

(2) The finished skim milk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of skim milk solids based on those dairy ingredients specified in paragraph (a)(1) of this section, 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) *Nomenclature.* The name of the food is "skim milk chocolate", "skim milk chocolate coating", "sweet skim milk chocolate", or "sweet skim milk chocolate coating".

§ 163.145 Mixed dairy product chocolates.

(a) *Description.* Mixed dairy product chocolates are the foods that conform to the standard of identity, and are subject to the requirements for label declaration of ingredients for milk chocolate in § 163.130, except that:

(1) The optional dairy ingredients for each of the foods are mixtures of two or more of the following:

(i) Any dairy ingredients specified in § 163.130;

(ii) Any dairy ingredients specified in § 163.135;

(iii) Any dairy ingredients specified in § 163.140; or

(iv) Malted milk; and

(2) The finished mixed dairy product chocolates shall contain not less than 12 percent by weight of total milk solids derived from those dairy products referred to in paragraph (a)(1) of this section, exclusive of any added sweetener or other dairy-derived ingredient that is added beyond that amount that is normally present in the specified dairy product, and may contain less than 3.39 percent by weight of milkfat. The quantity of each component used in any such mixture is such that no component contributes less than one third of the weight of the total milk solids contributed by that component which is used in the largest proportion.

(b) *Nomenclature.* The name of the food is “chocolate”, or “chocolate coating”, preceded by the designation of the type of milk ingredients used as prescribed in paragraph (a) of this section in order of predominance by weight, e.g., “milk and skim milk chocolate”.

§ 163.150 Sweet cocoa and vegetable fat coating.

(a) *Description.* Sweet cocoa 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:

(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