

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.

AUTHORITY: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

SOURCE: 42 FR 14475, Mar. 15, 1977, unless otherwise noted.

### 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

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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 than 16 ounces, enough containers to provide a total quantity of at least 24 pounds of nuts.

(2) If compliance with §164.120(c) is to be determined, first follow the procedure set forth therein.

(3) Determine the percent by weight of each nut ingredient present in each container separately. Calculate the average percentage of each nut ingredient present. If the average percent found for each nut ingredient present is 2 percent or more and none of the individual nut ingredients exceeds 80 percent by weight of the finished food, the lot will be deemed to be in compliance with the percentage requirements of paragraph (a) of this section. If the average percent found for a single nut ingredient exceeds 50 percent by weight of the finished food and the average percent found is within the range indicated by the number declared on the label in accordance with this paragraph, the lot will be deemed to be in compliance with the labeling requirements of this paragraph.

(e) *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, except that:

(1) If the Spanish variety of peanuts is used, it shall be declared as "Spanish peanuts". Other varieties of peanuts shall be declared as "peanuts", or alternatively "\_\_\_\_\_ peanuts", the blank being filled in with the varietal name of the peanuts used.

(2) If the peanut ingredient or ingredients as provided for in paragraph (b)(2) of this section are unblanched, the label shall show that fact by such statement as "Peanuts unblanched", "Peanuts skins on", or words of similar import, unless the vignette clearly depicts peanuts with skins on.

(f) The words and statements specified in paragraph (e) of this section showing the ingredients present shall be listed on the principal display panel or panels or any appropriate information panel without obscuring design, vignettes, or crowding. The declaration shall appear in conspicuous and easily legible letters of boldface print or type the size of which shall be not less than one-half of that required by part 101 of this chapter for the statement of net quantity of contents appearing on the label, but in no case less than one-sixteenth of an inch in height. The entire ingredient statement shall appear on at least one panel of the label. If the label bears any pictorial representation of the mixture of nuts, it shall depict the relative proportions of the nut ingredients of the food. If the label bears a pictorial representation of only one of each nut ingredient present, the nuts shall be depicted in the order of decreasing predominance by weight. A factual statement that the food does not contain a particular nut ingredient or ingredients may be shown on the label if the statement is not misleading and does not result in an insufficiency of label space for the proper declaration of information required by or under authority of the act to appear on the label.

[42 FR 14475, Mar. 15, 1977, as amended at 58 FR 2885, Jan. 6, 1993]

§ 164.120 Shelled nuts in rigid or semirigid containers.

(a)-(b) [Reserved]

(c) *Fill of container.* (1) The standard of fill for shelled nuts in rigid or semirigid containers is a fill such that the average volume of nuts, from the number of containers specified in §164.110(d)(1), is not less than 85 percent of the container volume as determined by the method in paragraph (c)(2) of this section.

(2) The method for determining the percent of fill is as follows: