

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of the AD remains April 8, 1998.

In rule FR Doc. 98-7414 published on March 24, 1998 (63 FR 14026), make the following corrections:

§ 39.13 [Corrected]

(1) On page 14027, in the first column under Supplementary Information, change "December 2, 1996" to "April 17, 1997."

(2) On page 14028, in paragraphs (c)(1), (d), and (g), change "December 2, 1996" to "April 17, 1997."

Issued in Fort Worth, Texas, on July 10, 1998.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.

[FR Doc. 98-19178 Filed 7-17-98; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") amends the package labeling requirements for lamp products under the Commission's Appliance Labeling Rule ("Rule") in response to a petition from Osram Sylvania, Ltd. ("Petitioner"). The Petitioner requests that it be allowed to distribute to consumers, through retailers, lamp products without individual packaging or labeling, where the bulk shipping cartons include the disclosures currently required by the Rule and where retailers display the lamp products for sale to consumers in the bulk shipping cartons. The interpretative amendment the Commission adopts clarifies that manufacturers and private labelers of lamp products that are not packaged for individual retail sale may meet the labeling disclosure requirements of the Rule by making the disclosures on labeling on the bulk shipping carton, where the bulk shipping carton is used to display the lamps for retail sale.

EFFECTIVE DATE: July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Federal Trade

Commission, Bureau of Consumer Protection, Division of Enforcement, Sixth St. and Pennsylvania Ave., NW, Room S-4302, Washington, D.C. 20580, (202) 326-3013 (voice), (202) 326-3259 (fax).

SUPPLEMENTARY INFORMATION:

I. Introduction

Petitioner, Osram Sylvania, Ltd., a manufacturer of lamp products, requests the Commission's authorization to market certain general service non-reflector incandescent light bulbs in bulk-pack shipping cartons that are labeled with the disclosures required by the Rule, instead of packaging and labeling the light bulbs for individual retail sale to consumers, where the light bulbs will be displayed for retail sale in the bulk-pack shipping cartons, under specific, limited conditions. The Petitioner's request, the Commission's analysis, and the interpretative amendment to the Rule adopted by the Commission are described below.

II. Overview of Rule's Labeling Requirements

On May 13, 1994, the Commission promulgated labeling requirements for various types of light bulbs and other lamp products as amendments to the Appliance Labeling Rule¹ in response to amendments the Energy Policy Act of 1992 ("EPACT")² made to the Energy Policy and Conservation Act ("EPCA").³ As amended, EPCA directed the Commission to prescribe rules requiring that the labeling of specific lamp products indicate conspicuously on the packaging of the lamps, in a manner prescribed by the Commission, such information as the Commission deemed necessary to enable consumers "to select the most energy efficient lamps which meet their requirements." Congress gave the Commission the discretion to determine what specific disclosures were necessary, and where and how they should be made. The covered lamp products include: general service fluorescent lamps, general service (both non-reflector and reflector) incandescent lamps, and medium screw base compact fluorescent lamps.

To provide consumers with the information they need to select the most energy efficient lamps that meet their requirements, the Commission adopted labeling provisions, under section

¹ Final rule [and Statement of Basis and Purpose] ("SBP"), 59 FR 25176 (1994) (codified at 16 CFR Part 305 (1997)). The lamp labeling requirements became effective May 15, 1995.

² Pub. L. No. 102-486, 106 Stat. 2776, 2817-2832 (Oct. 24, 1992) (codified at 42 U.S.C. 6201, 6291-6309).

³ 42 U.S.C. 6291 *et seq.*

305.11(e)(1)(i) of the Rule, 16 CFR 305.11(e)(1)(i), that require that the principal display panel on package labels of general service incandescent light bulbs (both non-reflector and reflector) and medium screw base compact fluorescent lamps disclose clearly and conspicuously light output (in lumens), energy used (in watts), and life (in hours),⁴ The labeling provisions also mandate that the principal display panel disclose the number of lamps included in the package (if more than one), and the design voltage of each lamp included in the package (if other than 120 volts). For multi-filament incandescent light bulbs, section 305.11(e)(1)(vii), 16 CFR 305.11(e)(1)(vii), requires that the principal display panel disclose clearly and conspicuously the bulb's light output and energy used at each of the bulb's levels of light output, and the bulb's life measured on the basis of the filament that fails first. Section 305.11(e)(1)(ii), 16 CFR 305.11(e)(1)(ii), specifies how the disclosures must appear on the label.

Labels for incandescent spot lights, flood lights, and down lights and for general service fluorescent lamps must include a capital letter "E" printed within a circle and followed by an asterisk referring to a specific statement that the encircled "E" means the lamp meets federal minimum efficiency standards. The encircled "E" must be disclosed clearly and conspicuously in color-contrasting ink, and in a typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, whichever is larger. If the required statement is not disclosed on the principal display panel, the asterisk must be followed by the statement: "*See [Back, Top, Side]

⁴ Section 305.11(e)(1)(iii), 16 CFR 305.11(e)(1)(iii), requires that the light output, wattage and life disclosures for general service incandescent lamps and medium base compact fluorescent lamps be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is 125 volts or 130 volts, section 305.11(e)(1)(iii) requires that the disclosures each be followed by the phrase "at 120 volts." It allows manufacturers and private labelers of 125 or 130 design voltage lamps to add disclosures of light output, wattage, and life at the lamp's design voltage if those disclosures are each followed by the phrase "at (125/130) volts," and if all panels of the package that contain a claimed light output, wattage, or life clearly and conspicuously identify the lamp as "(125 volt/130 volt)." If the disclosures on the principal display panel of the package are for operation at 125 or 130 volts, and if the disclosures at 120 volts are made on a separate panel, the principal display panel must clearly and conspicuously disclose the following statement: "This product is designed for (125/130) volts. When used on the normal line voltage of 120 volts, the light output and energy efficiency are noticeably reduced. See (side/back) panel for 120 volt ratings."

panel for details." 16 CFR 305.11(e)(2)–(2)(i).⁵

Section 305.11(e)(1)(vi), 16 CFR 305.11(e)(1)(vi), requires that the principal display panel for each of these lamp products also clearly and conspicuously disclose the following Advisory Disclosure:

To save energy costs, find the bulbs with the (beam spread and) light output you need, then choose the one with the lowest watts.⁶

Section 305.11(e)(4), 16 CFR 305.11(e)(4), requires that cartons in which lamp products covered by the Rule are shipped in the United States or imported into the United States disclose clearly and conspicuously: "These lamps comply with Federal energy labeling requirements."

Last, section 305.4(a)(1), 16 CFR 305.4(a)(1), prohibits manufacturers and private labelers from distributing covered lamp products that are not labeled in accordance with the Rule's requirements; and section 305.4(a)(2), 16 CFR 305.4(a)(2), prohibits retailers and others from removing the labels or rendering them illegible.

III. Osram Sylvania's Petition

The Petitioner requests the Commission's authorization to market single-wattage 40, 60, 75, and 100 watt general service non-reflector incandescent light bulbs in bulk-pack shipping cartons that are labeled with the disclosures required by the Rule, instead of packaging and labeling the light bulbs for individual retail sale to consumers, where the light bulbs will be displayed for retail sale in the bulk-pack shipping cartons. In connection with its request, the Petitioner proposes the following conditions:

- Individual light bulbs would be etched with brand name identification, voltage, and wattage (which the Petitioner describes as current industry practice).
- Outer cartons would display the labeling disclosures that the Rule requires on the principal display panel of product packages. The Petitioner states, for example, that the cartons could be printed so that the required disclosures of light output, energy used, and life for all four wattages occupy a large area on every side of the outer carton to ensure that the required disclosures are visible no matter how the cartons are mixed or displayed.
- The authorization for these bulk-pack shipments would be limited to general

⁵Manufacturers and private labelers that do not individually package, or put labels on, their general service fluorescent lamp products may meet the labeling disclosure requirements by permanently marking the lamp clearly and conspicuously with the encircled "E." See SBP, 59 FR at 25198.

⁶The reference to beam spread is required only on labels of incandescent spot lights, flood lights, and down lights.

service non-reflector incandescent light bulbs with a design voltage of 120 volts.

- The authorization would be limited to unusual or rare events such as "store openings" or "manager specials."

IV. Analysis and Amendment

Except for general service fluorescent lamp products (which were being distributed for retail sale to consumers in bulk packaging),⁷ at the time of the original rulemaking proceeding all other light bulbs and other lamp products under discussion were being sold in individual retail-sale packages containing one or more lamps. As a result, the discussion of labeling requirements assumed that covered light bulbs and other lamp products would be packaged and labeled in retail-sale packaging units. The Rule, however, does not define the terms "label," "principal display panel," or "package," as they are used in the Rule, and, except for general service fluorescent lamps, the Rule does not specify how manufacturers and private labelers of lamp products sold to consumers without retail-sale packaging must make the required labeling disclosures.

In considering the Petition, the Commission has determined that making the disclosures required by the Rule on the labels of the bulk shipping carton, where the bulk shipping carton is used to display the lamps for retail sale ("bulk shipping/retail display carton"), is acceptable. Making the required labeling disclosures on these bulk shipping/retail display cartons satisfies the statutory mandate that package labeling disclose "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements," and it is consistent with the Rule's labeling requirements. Where the bulk shipping/retail display carton is used to display these lamps for retail sale, labeling the carton with the required disclosures will ensure that: (1) The disclosures are made prior to purchase; (2) the disclosures enable consumers to select the most energy efficient lamps that meet their requirements; and (3) the disclosures are made in a manner and form that allow consumers to compare competing lamp products in making their purchase selections. For purposes of making the required labeling disclosures, therefore, the Commission interprets the terms "label," "principal display panel," and "package" in the Rule to include the shipping carton/

⁷The Rule already authorizes the use of an alternative to disclosures on individual package labeling for general service fluorescent lamps. See note 5, supra.

retail display carton for lamp products that are not packaged for individual retail sale.

The Petitioner requested a limited, conditional authorization to make the required disclosures on bulk shipping cartons only for single-wattage, general service non-reflector incandescent light bulbs with a design voltage of 120 volts. The Commission, however, has determined that labeling the bulk shipping/retail display carton for lamp products that are not packaged for individual retail sale, under the circumstances described above, will provide consumers with the prepurchase information required by the Rule. This alternative to individual, retail-sale package labeling, therefore, is acceptable for all general service fluorescent lamps, medium screw base compact fluorescent lamps, and general service (both non-reflector and reflector) incandescent light bulbs covered by the Rule.

The Petitioner also suggested that certain conditions might be necessary to ensure that the labeling on the bulk shipping/retail display carton meets the requirements of the Rule. The Commission has determined that it is not necessary to impose the following conditions that were suggested by the Petitioner:

- *Marking individual lamps*—Some kind of marking or other identification on each individual bulb or tube enables consumers to select the specific bulb or tube they desire from the bulk carton. Marking or otherwise identifying each lamp with wattage and voltage is especially important for incandescent light bulbs because it is unsafe to use an incandescent light bulb with a higher wattage than the rating of the fixture in which it is used.⁸ Manufacturers and private labelers, however, currently voluntarily mark incandescent light bulbs and other types of lamp products with wattage and design voltage information so that consumers can use them safely. The Commission believes that the marketplace provides incentives for manufacturers and private labelers to continue marking this information on lamp products, so it is unnecessary for the Commission to require such marking on lamp products marketed through bulk shipping/retail display cartons.⁹

⁸SBP, 59 FR at 25185.

⁹See Repeal of rule [Statement of Basis and Purpose for repeal of the Light Bulb Rule, 16 CFR Part 409], 61 FR 33308, at 33311–12 (1996). In comments supporting the repeal of the Light Bulb Rule, which had required product marking, General Electric Co. stated that manufacturers would continue marking individual light bulbs with wattage and design voltage as a sound business practice that reduces liability and gives consumers important information, and the National Electrical Manufacturers Association stated that an international safety standard issued by the International Electrotechnical Commission requires

• *Making disclosures on all sides of the carton*—When lamps that are not packaged for individual retail sale are distributed to retailers in these bulk shipping/retail display cartons, the bulk shipping/retail display cartons will constitute the required labeling. The Rule already prohibits retailers from removing the required labels or rendering them illegible. Retailers, therefore, will be required to display these bulk-packaged lamp products for retail sale to consumers in the bulk shipping/retail display carton with the required labeling disclosures visible to consumers at the point of retail sale. It is unnecessary, therefore, for the Commission to require that the disclosures be made on labeling on multiple sides of the bulk shipping/retail display carton. Of course, manufacturers may choose to make the disclosures on all sides of the carton to facilitate display by the retailer.

• *Limiting use to unusual or rare sales events*—Because labeling on the bulk shipping/retail display cartons will contain the disclosures required by the Rule (to provide consumers with prepurchase information they need) and the cartons must be displayed at the point of retail sale with the required disclosures clearly visible to consumers prior to purchase, it is unnecessary to limit use of this labeling approach to unusual or rare sales events.

For the reasons explained above, the Commission adopts an interpretative amendment to the Rule to clarify that manufacturers and private labelers of all types of covered lamp products may meet the Rule's labeling disclosure requirements by making the required disclosures on the bulk shipping carton, where the lamps are not packaged or labeled for individual retail sale and where the lamps are displayed for retail sale in the bulk shipping/retail display carton.¹⁰ The Rule continues to require that individual retail-sale packages of lamps be labeled with the disclosures required by the Rule, regardless of whether they are packaged in bulk shipping/retail display cartons that also contain the required labeling disclosures.

V. Exemption From Notice and Comment Requirements

The amendment the Commission adopts today interprets and clarifies the Rule by stating that, for any covered lamp product that is not packaged and labeled for individual retail sale, manufacturers and private labelers may meet the labeling requirements of the Rule by making the required disclosures

marking wattage and voltage on general service incandescent light bulbs.

¹⁰ As they currently must do under the Rule, manufacturers and private labelers also will have to disclose, clearly and conspicuously, on all cartons in which the lamps are shipped in the United States or imported into the United States, that: "These lamps comply with Federal energy labeling requirements."

on the labels of the bulk shipping/retail display carton, where the bulk shipping/retail display carton is used to display the lamps for retail sale. The information that will be provided to consumers, and the time at which it will be provided to them, is the same as that currently required by the Rule. This interpretative amendment does not create any new obligations, but only clarifies how the Commission interprets the terms "principal display panel," "label," and "package" for lamp products that are shipped in bulk shipping/retail display cartons without individual retail-sale packaging, where the lamps are displayed for retail sale in the bulk shipping/retail display cartons.¹¹ For these reasons, the Commission has determined that the amendment constitutes an interpretative rule, for which notice and public comment are not required under section 553(b)(A) of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b)(A). The amendment is effective today. Because the amendment is merely an interpretative rule, section 553(d)(2) of the APA, 5 U.S.C. 553(d)(2), which requires publication or service of a substantive rule not less than 30 days before its effective date, does not apply.

VI. Regulatory Flexibility Act

Because this amendment is an interpretative rule that is not covered by the notice and comment provisions of section 553(b) of the APA, the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, does not apply. Nevertheless, the Commission has considered the potential effect of the amendment on small entities. The Rule requires that manufacturers and other lamp product sellers: (1) disclose specific information in labels and catalogs; (2) submit annual reports to the Commission for certain lamp products;¹² and (3) substantiate the required disclosures and maintain records of that substantiating data. In promulgating these disclosure requirements, the Commission certified that the lamp labeling requirements in the Appliance Labeling Rule would not have "a significant economic impact on a substantial number of small entities." The interpretative amendment adopted today does not impose any new obligations on sellers, large or small.

¹¹ The interpretations of the terms "principal display panel," "label," and "package" in this Rule, are consistent with the requirements of, and the definitions of these terms in, the Fair Packaging and Labeling Act ("FPLA"), 15 U.S.C. 1541 *et seq.*, and in the Commission's Regulations under section 4 of the FPLA, 16 CFR Part 500.

¹² These reporting requirements currently have been stayed by the Commission.

The Commission has concluded that the impact of the amendment on small businesses as well as other entities within the affected industry, if any, will be minimal. Accordingly, this notice does not contain a regulatory analysis under section 604 of the RFA, 5 U.S.C. 604.

VII. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (i.e., recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget ("OMB"), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084-0069). This interpretative amendment does not create any new information collection requirements.

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Penalties, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6294.

Text of Amendments

In consideration of the foregoing, the Commission amends title 16, chapter I, subchapter C of the Code of Federal Regulations, as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCE AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

1. The authority for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

§ 305.11 [Amended]

2. Section 305.11(e) is amended by revising paragraph (e)(2), redesignating paragraphs (e)(3) and (e)(4) as paragraphs (e)(4) and (e)(5), and adding a new paragraph (e)(3) to read as follows:

* * * * *

(e) * * *

(2) Any covered product that is a general service fluorescent lamp or an incandescent reflector lamp shall be labeled clearly and conspicuously with a capital letter "E" printed within a circle and followed by an asterisk. The

label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

*[The encircled "E"] means this bulb meets Federal minimum efficiency standards.

(i) If the statement is not disclosed on the principal display panel, the asterisk shall be followed by the following statement:

See [Back, Top, Side] panel for details.

(ii) For purposes of this paragraph (e), the encircled capital letter "E" shall be clearly and conspicuously disclosed in color-contrasting ink on the label of any covered product that is a general service fluorescent lamp and will be deemed "conspicuous," in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the "UL" or "ETL" logos, whichever is larger.

(3)(i) A manufacturer or private labeler who distributes general service fluorescent lamps, compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps) without labels attached to the lamps or without labels on individual retail-sale packaging for one or more lamps may meet the disclosure requirements of paragraphs (e)(1) and (e)(2) of this section by making the required disclosures, in the manner and form required by those paragraphs, on the bulk shipping cartons that are to be used to display the lamps for retail sale.

(ii) Instead of labeling any covered product that is a general service fluorescent lamp with the encircled "E" and with the statement described in paragraph (e)(2) of this section, a manufacturer or private labeler who would not otherwise put a label on such a lamp may meet the disclosure requirements of that paragraph by permanently marking the lamp clearly and conspicuously with the encircled "E".

* * * * *

By direction of the Commission,
Commissioner Thompson dissenting.

Donald S. Clark,
Secretary.

[FR Doc. 98-19212 Filed 7-17-98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 94F-0040]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of chlorine dioxide as an antimicrobial agent in water used to wash certain fruits and vegetables. This action is in response to a petition filed by the National Food Processors Association.

DATES: The regulation is effective July 20, 1998; written objections and requests for a hearing by August 19, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204-0001, 202-418-3074.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 24, 1994 (59 FR 13970), FDA announced that a food additive petition (FAP 4A4415) had been filed by the National Food Processors Association, 1401 New York Ave. NW., Washington, DC 20005. The petition proposed that the food additive regulations be amended to provide for the safe use of chlorine dioxide to disinfect waters in contact with fresh fruits and vegetables intended for human consumption. In its evaluation of the petition, the agency has concluded that the water is not disinfected, but the microbial contamination of the water is reduced.

An antimicrobial added to water used to wash fruits and vegetables may be subject to regulation as a food additive under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), or may be subject to regulation as a pesticide chemical under section 408 of the act (21 U.S.C. 346a), depending upon the status of the fruit or vegetable which is washed with the antimicrobial solution. FDA regulates

antimicrobials added to water used in food and for food processing.¹ An antimicrobial substance added to water used to wash fruits and vegetables that are not raw agricultural commodities² is an antimicrobial "used in food and for food processing." EPA regulates, as pesticides under FIFRA (7 U.S.C. 136(u)) and as pesticide chemicals under section 201(q) of the act, antimicrobial substances directed against microbes in water used to wash raw agricultural commodities.

The petition proposed the use of chlorine dioxide in water for contact with fresh fruits and vegetables, regardless of whether such fruits and vegetables are raw agricultural commodities or processed food. This proposed use would include uses subject to EPA regulatory authority, as well as FDA jurisdiction. Because FDA can act only to approve those uses subject to its jurisdiction, the approval set out in this final rule is limited to the use of chlorine dioxide in water used to wash fruits and vegetables that are not raw agricultural commodities. Any person who wishes to request an approval for the use of chlorine dioxide in water used to wash raw agricultural commodities should consult with EPA to ascertain whether a FIFRA pesticide registration and a section 408 of the act tolerance or exemption from the requirement for such tolerance would be required by EPA.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of chlorine dioxide to reduce the microbial contamination of water used to wash fruits and vegetables, other than raw agricultural commodities, is safe and that the additive will achieve its intended technical effect. FDA has also considered the safety of chlorine dioxide breakdown products, i.e., chlorite and chlorate, and concludes

¹ This is consistent with the memorandum of understanding (MOU) between FDA and the Environmental Protection Agency (EPA) on the jurisdiction over substances in drinking water (44 FR 42775, July 20, 1979). Moreover, an antimicrobial that is added to water used in food and for food processing is an antimicrobial that is used in or on a "processed food." The use of an antimicrobial in or on processed food is subject to FDA's regulatory authority as a food additive under section 409 of the act. Such use is not a pesticide use because pests that are in or on processed food are excepted from the definition of fungus in 7 U.S.C. 136(k) and from the definition of pest in 40 CFR 152.5. Therefore, such an antimicrobial is neither a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136(u)) nor a "pesticide chemical" under section 201(q) of the act (21 U.S.C. 321(q)).

² Such nonraw agricultural commodities include, for example, those that are cut, peeled, sliced, chopped, ground, irradiated, or cooked.