RECORD #10

TITLE: 10 CFR 20.201(b), "Surveys", Final Rule - Effective November 20, 1981

FICHE: 65789-001

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

NOV 0 5 1981

MEMORANDUM FOR: Robert T. Carlson, Director, EIS, Region I
Carl Alderson, Director, EIS, Region II
Robert Warnick, Director, EIS, Region III
James Gagliardo, Director, EIS, Region IV
Allen Johnson, Director, EIS, Region V

FROM: R. H. Wessman, Chief, Enforcement Branch,
Enforcement and Investigations Staff, IE

SUBJECT: 10 CFR 20.201(b), "SURVEYS," FINAL RULE - EFFECTIVE NOVEMBER 30, 1981 (FR 53647-53648, OCTOBER 30, 1981)

Enclosed is a copy of the Federal Register notice regarding the changes made in 10 CFR 20.201(b), Surveys. In summary, the rule is enforceable whenever adequate surveys (evaluations) are not performed, even though failure to perform adequate surveys do not result in a violation of another NRC radiation protection standard. The new rule is based on the assumption that such failure has the potential to cause a violation or a violation could have occurred. In the context of the rule, the principal role of performing surveys or making evaluations necessary to comply with the regulations is preventive, rather than to determine if a licensee has or has not satisfied other Part 20 requirements.

Note that the revised rule not only requires surveys as may be necessary to comply with the regulations, but that surveys must be performed that are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present; thus, a survey serves as an effective means in preventing both the occurrence of a violation and the development of conditions in which violations could occur (see Supplementary Information FR 53647).

While the rule is effective on November 30, 1981, most licensees do not subscribe to the Federal Register, nor are they required to subscribe. Therefore, enforcement actions should not be considered until the rule is published in the Rules and Regulations for which licensees are required to have current copies. This is in keeping with past practice.

NOTE

R. H. Wessman, Chief, Enforcement Branch
Enforcement and Investigations Staff, IE

Enclosure:
as stated

11-31

Rules and Regulations

Federal Register
Vol. 46, No. 210
Friday, October 30, 1981

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 235, and 245

Special Milk Program and Private School Participation

Correction

In FR Doc. 81-30399, appearing on page 51363, in the issue of Tuesday, October 20, 1981, make the following correction.

On page 51364, first column, "Dates:" paragraph, the comment date reading "...ember 4, 1981", should read "...mber 20, 1981".

...G CODE 1505-01-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 330]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period November 1-7, 1981. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: November 1, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION: Findings. This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been ...ated a "non-major" rule. This ...tion is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981-82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. A regulatory impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

The committee met again publicly on October 27, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons has improved somewhat.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Information collection requirements (reporting or record keeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

Section 910.630 is added as follows:

§ 910.630 Lemon Regulation 330.

The quantity of lemons grown in California and Arizona which may be handled during the period November 1, 1981, through November 7, 1981, is established at 220,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-31785 Filed 10-29-81; 11:50 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Radiation Protection Survey Requirement; Miscellaneous Clarifying Amendments

AGENCY: Nuclear Regulatory Commission

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) has revised its regulations to make clear that, in accordance with the original regulatory intent, persons may be cited for violation of the NRC radiation protection survey requirement in § 20.201(b) for failure to perform surveys when indicated or for performing inadequate surveys. Persons may be cited not only when the failure to survey or the performance of an inadequate survey results in a violation of another NRC radiation protection standard but also in those circumstances in which violation of an NRC radiation protection standard could have occurred because of the lack of an adequate survey even though no such additional violation actually did occur.

EFFECTIVE DATE: November 30, 1981.

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Occupational Radiation Protection Branch, Office of Nuclear Regulatory Research USNRC, Washington, D.C. 20555, Telephone (301) 443-5970.

SUPPLEMENTARY INFORMATION: On July 3, 1980, the Nuclear Regulatory

Commission (NRC) published in the Federal Register (45 FR 45302–45303) proposed miscellaneous clarifying amendments to §§ 20.101, 20.103, 20.104(a), (b), 20.105 and 20.201(b) of its "Standards for Protection Against Radiation" in 10 CFR Part 20. Interested persons were invited to submit written comments and suggestions on the proposed amendments during the sixty-day comment period which expired September 2, 1980. Five letters of comment were received. While all the commenters addressed the proposed changes to §§ 20.101, 20.103, 20.104(a), (b) and 20.105, only one commenter expressed views on the proposed clarifying amendment to § 20.201(b).

After reviewing the public comments, the NRC has decided that it would be best to consider the proposed clarifying amendments to §§ 20.101, 20.103, 20.104(a), (b) and 20.105 in connection with the overall review and revision of 10 CFR Part 20 currently in progress (45 FR 18023, March 20, 1980, Standards for Protection Against Radiation; Advance Notice of Proposed Rulemaking). These miscellaneous clarifying amendments will accordingly be considered in that proceeding and resolved in a manner appropriate to and consistent with the proposed overall revision of Part 20. For this reason, the NRC is not responding to the public comments on §§ 20.101, 20.103, 20.104(a), (b) and 20.105 at the present time. Instead, the NRC will address these comments in connection with the major revision of Part 20.

Since the need for a clarifying amendment to the survey requirement in § 20.201(b) remains pressing and since this change is readily separable from the other clarifying amendments contained in the July 3, 1980, notice of proposed rulemaking, the NRC has decided, in the interest of protecting the public health and safety, to promulgate a clarifying amendment to §20.201(b) at this time.

The only public comment received on the proposed clarifying amendment to 10 CFR 20.201(b) questioned whether the proposed language eliminated the goal of preventing overexposures. The proposed rule was not intended to eliminate preventive actions because tho objective and principal function of the survey requirement is preventive. By providing information concerning the extent of radiation and radioactive material hazards that may be present, the survey serves as an effective tool in preventing both the occurrence of violations of 10 CFR Part 20 and the development of conditions in which violations of 10 CFR Part 20 could occur.

Arguments by some licensees that the text of § 20.201(b) lends support to the view that § 20.201(b) is enforceable only when noncompliance with the survey requirement results in violation of another Part 20 requirement provided the impetus for the proposed change. For example, one licensee argued that § 20.201 was not violated where a person entered a radiation field of 2000 rem/hr after performing an inaccurate and incomplete survey indicating a radiation field of 70 rem/hr and did not receive an exposure in excess of Part 20 limits. However, the sole commenter suggested that a change of § 20.201(b) was not essential to eliminate inadequate surveying that might cause but did not actually result in additional violations because the present language in § 20.201(b) could be read to cover such circumstances. The Commission continues to believe that § 20.201(b) should be clarified to make clear to all concerned that in order to provide adequate protection of worker health and safety, each licensee has an independent and enforceable obligation to ascertain the extent of radiation hazards present by conducting adequate surveys. This amendment puts licensees on notice that compliance with the Commission's radiological requirements in Part 20 should be by design and not fortuitous

While there is a significant relationship between the survey requirement and other Part 20 requirements, in that information obtained through responsible compliance with § 20.201(b) may well prove essential in determining whether a licensee has or has not satisfied other Part 20 requirements, this is not the primary function of the survey requirement. The principal role of the survey requirement is preventive. Adequate survey procedures provide measurable protection for the health and safety of the worker and the public because they provide the information necessary for the establishment of adequate protective measures. The usefulness of this "early warning system" may be seriously reduced if licensees are not held responsible for failure to conduct any survey or for failure to conduct an adequate survey when violations of other Part 20 requirements have not occurred. Therefore, to make enforcement of the survey requirement, § 20.201(b) contingent upon whether other violations of Part 20 have in fact occurred, may adversely impact the survey purpose of preventing potential harm to the worker or the public.

Although there has been no change in the purpose of the clarifying amendment, the text of revised § 20.201(b) differs from the text set out in the proposed rule. As suggested by the commenter, the existing text of § 20.201(b) has been retained with an addition to make clear that surveys must be reasonably intended to prevent violations. The clarifying phrase provides that when a violation of other Part 20 requirements has not occurred, the Commission will consider in determining whether § 20.201 survey requirement has met the reasonableness of the actions taken in the light of all the circumstances to evaluate the extent of radiation hazards.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, the following clarifying amendment to 10 CFR Part 20 is published as a document subject to codification

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. Section 20.201(b) is revised to read as follows:

§ 20.201 Surveys.

* * * * *

(b) Each licensee shall make or cause to be made such surveys as (1) may be necessary for the licensee to comply with the regulations in this part, and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present.

(Secs. 53, 62, 81, 101, 103, 104 and 161b and i, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2073, 2092, 2111, 2131, 2134 and 2201(b) and (i)); Sec. 201(f), Pub. L. 93–438, 88 Stat. 1243 (42 U.S.C. 5841(f)).

Dated at Bethesda, Md., this 25th day of September 1981.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 81–31598 Filed 10–29–81; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9102]

Kroger Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order requires, among other things, a Cincinnati, Ohio, operator of a major retail food chain to cease advertising survey-based food price comparisons which refer to any geographic area or competitor, unless