

Proposed Rule Making

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

[21 CFR Part 320]

DEPRESSANT AND STIMULANT DRUGS

Use of Peyote for Religious Purposes

Proposed findings of fact and conclusions and tentative order regarding the petition of the Church of the Awakening to amend § 320.3(c) (3).

In the matter of the petition of the Church of the Awakening to amend § 320.3(c) (3):

Petitioner's amendment would grant the Church an exemption to use peyote for religious purposes. A hearing was held on this matter before Mr. Frederick M. Garfield from June 30, 1969 through July 9, 1969. The report, findings of fact, conclusions and recommendations of the hearing examiner follow in their entirety:

In the matter of: Petition of the Church of the Awakening to amend 21 CFR 320.3(c) (3).

The Church of the Awakening first petitioned the Food and Drug Administration on May 17, 1967 under the Drug Abuse Control Amendments of 1965 for an exemption to use peyote for religious purposes. This petition was denied by the Commissioner of the Food and Drug Administration on July 10, 1967. On January 11, 1968, the Church again petitioned the Food and Drug Administration for an exemption. This petition was also denied.

On May 15, 1969, the Director of the Bureau of Narcotics and Dangerous Drugs received a petition from the Church of the Awakening, declared to be a New Mexico corporation, Dr. John W. Aiken of Socorro, N. Mex., President of the Church, and 13 members of the Church, as copetitioners to amend § 320.3(c) (3) of Title 21 of the Code of the Federal Regulations. The purpose of the petition is to obtain an exemption for the said Church to permit them the nondrug use of peyote in bona fide religious ceremonies. Notification of the submission of this petition was published in the FEDERAL REGISTER on June 26, 1969 (34 F.R. 9871).

On June 11, 1969, Dr. John Aiken, and Mr. John Adams of the American Civil Liberties Union, met with members of the Chief Counsel's Office of the Bureau of Narcotics and Dangerous Drugs and arranged a mutually convenient procedure by which the Church could petition for an exemption and also make a record containing the necessary facts should an appeal to the courts be necessary.

A prehearing conference was held by the Hearing Officer on June 30, 1969, at which time a record was made of the proceedings. During this prehearing conference, it was established that the particular section in question was erroneously cited, i.e., Petitioners brought the action pursuant to section 701(e)(1)(b) of the Federal Food and Drug Act to amend § 166.3(c) (3) of title 21 of the United States Code of Federal Regulations whereas this regulation is now designated as 21 CFR 320.3(c) (3). Other matters

were discussed as to the conduct of the hearing. It was agreed that while this hearing was informal, a record would be made and the record would be used in lieu of a separate public hearing in the event of a request for a court review.

The hearing began on June 30, 1969, and ended on July 9, 1969. A transcript of the testimony, 926 pages, sets forth the testimony of seven witnesses on behalf of the Government and ten witnesses on behalf of the Petitioner. Additionally, four depositions were taken between June 18, 1969 and June 25, 1969, consisting of some 280 pages. Nineteen exhibits were introduced into evidence on behalf of the Government and 26 were introduced by the Petitioner. Briefs were filed by the Petitioner and the Government.

The Drug Abuse Control Amendments of 1965 were passed by the House of Representatives on March 10, 1965. The Senate passed its version on June 23, 1965. On July 8, 1965, the House concurred in the Senate's amendments and the Bill was signed into law by the President on July 15, 1965. It is vital to note in this respect that the Senate report differed significantly from the House report in that it said "the Committee determined that it would not be desirable to specify drugs other than barbiturates and amphetamines as subject to the controls of the Bill, but determine that the other classes of drugs are to be brought under control of the Bill on a case by case basis by the Secretary of Health, Education, and Welfare under the standards prescribed in the legislation. In accordance with this determination, the Committee omitted specific reference to peyote as a substance subject to the provisions of the legislation. It is expected that peyote will be subject to the same consideration as all other drugs in determining whether or not it should be included under the provisions of the legislation."

BASIS FOR PETITION

Subsequent discussions and inclusions in the Congressional Record as elucidated in Petitioner's own brief indicate that the exclusion of peyote from the legislation focused only on the Native American Church. Section 320.3 of title 21 specifically lists peyote and mescaline and salts of mescaline as being controlled drugs. The law also states:

"The listing of peyote in this subparagraph does not apply to nondrug use in bona fide religious ceremonies of the Native American Church: however, persons supplying the product to the Church are required to register and maintain appropriate records of their receipts and disbursements of the article."

Petitioners, in fact, seek an amendment to this section. They propose that the above text read as follows:

"The listing of peyote in this subparagraph does not apply to nondrug use in bona fide religious ceremonies of the Native American Church and of the Church of the Awakening: * * *"

The grounds upon which the Petitioners rely for the proposed amendment is as follows:

"The use of peyote by members of the Church of the Awakening in pursuance of precepts of said Church and under the provisions of its authorized personnel is in bona fide pursuit of a religious faith."

In the petition it is alleged that:

"The Church of the Awakening has a present national membership of approximately 390. It is an outgrowth of a group formed in 1958 in New Mexico for the purpose of religious study. It was incorporated in 1963 by members of said group as a nonprofit religious corporation under the laws of the State of New Mexico.

"In 1960, the sacramental use of peyote was found by said group to be valuable for the actualizing of the user's religious or spiritual potential. After said Church was incorporated, the use of peyote was named as a sacrament of the Church."

It is further alleged that:

"The religious sacramental use of peyote has been carried on by the members of said group since 1960 and by members of said Church since 1963. A number of members of the Church, including the individual petitioner signing this petition and the copetitioners joining in this petition have bona fide beliefs and convictions that the partaking and ingestion of peyote as a sacrament, according to the precepts of said Church, is valuable for the actualizing of their respective religious and spiritual potential, and they have a desire to use peyote for such purpose, but are prevented from doing so by reason of the regulations, amendment of which is sought by said petition. For such reason the regulation as now promulgated defeats the immunity given such use by the First Amendment of the Constitution of the United States."

From John W. Aiken's affidavit accompanying the petition the following is abstracted:

The Church of the Awakening is a New Mexico corporation, incorporated on October 14, 1963, as an outgrowth of a group of people who began meeting weekly in Socorro, N. Mex., for the purpose of religious or spiritual exploration. This group began by exploring the field of extrasensory perception and psychic phenomena. Petitioner and others began to experiment with the use of peyote and believed it to be the door to the inner-life of the spirit. Most of such religious explorations were done with peyote, but later mescaline was used in the same way with comparable results. After these initial experiments and alleged revelations, the Church of the Awakening was granted a charter by the State of New Mexico on October 14, 1963 as a nonprofit religious organization.

The bylaws of said Church provide that if other substances, in addition to peyote, with similar properties were found to be useful in the development of religious insight and experience, they might also be used, if this use is legal. The explicit purpose of the Church of the Awakening is to encourage spiritual growth on the part of each member to stimulate him to ask questions, to develop insights, and to encourage the sharing of such growth and insights with others in love and service. Each is encouraged to participate in his own spiritual growth and his own evolution. It is a precept of the Church that such growth and such evolution is the true purpose of all religion—in fact that such growth is religion.

Innergrowth or learning and service and sharing can be encouraged in traditional ways, but should be without the traditional bondage to approved forms and rituals. Innergrowth and learning is encouraged by the study of the writings of sages and

mystics. Group meetings at regular intervals is another very important and useful means in the process of growth. In such group activity, two practices are of great importance. One is sharing through discussion and the other sharing through silent meditation. Both should be practiced, but of the two, meditation has the greater potential for the stimulation of individual growth and understanding.

The Church purposes are further encouraged through individual and group participation in the ingestion of peyote. This substance is to be administered to those who have been previously prepared and by those who are certified monitors of the Church.

At this point in the petition, Dr. Aiken goes into a dissertation on the procedure of the preparation for the peyote ingestion. This procedure was changed during the hearing and will be discussed in depth later. The petition also states that it is the earnest desire of the Church and its officials to make available to members the tremendous potential for achieving a deep religious experience through the peyote sacrament and to protect members and the public from the hazards of improper use.

GOVERNMENT'S THEORY OF CASE

The Government recognizes in its brief that a balancing test is required wherein the free exercise of religion is weighed against the multifaceted governmental interest. The Government alleges that the importance of the religious practice abridged in the instant case is minimal within the petitioners' own framework; that the denial of the petitioners' request will not seriously interfere, if at all, with the practice of their religion, if indeed, a religion it be; that the Government has an overriding interest in controlling the use of peyote and other hallucinogenic drugs; that the present scheme of regulation is necessary to protect the public health; and, finally that an exemption such as the one requested in the instant case would have a disastrous effect on the overall program of dangerous drugs regulation. In particular, the Government claims that the proposed use of peyote by the petitioners is not "essential" nor "central" to the religion, and the denial of such use would not constitute an infringement on the petitioners' constitutional right to exercise their religion.

From the outset, the Government claims that the Church of the Awakening is not a religion. It maintains that the petitioners are religious, but their practices do not constitute a religion. Going further, the Government maintains that the denial of the petition would not prevent the practice of the petitioners' religion. Expanding the original concept, the Government maintains that it has a legitimate and compelling interest in regulating the use of peyote a drug shown to have a potential for abuse because of its hallucinogenic effect. The Government reasons that an examination of the evidence produced during the hearing shows the necessity for controlling dangerous substances, including peyote, and that the public interest weighs heavier in the balance than the alleged interference with the Church's religious practices.

The Government further shows that elaborate measures have been enacted to control the use of dangerous drugs. This is based on the philosophy that drugs must be shown safe and effective before they can be made available to the public, and even if they have been found effective they must be subjected to further controls according to their danger and potential for abuse. Some drugs have been shown to be dangerous physically and psychologically to the user and thus

See footnotes at end of document.

possess a potential for abuse. This, the Government says, presents a danger for the hallucinogens sufficient in itself to preclude granting the amendment. Whenever medical science can demonstrate that a religious practice is harmful to public health and not merely personal health, that practice rather than the belief can be prohibited without violating the constitutional guarantee of freedom of religion. The Government does not question the sincerity of the petitioning members of the Church of the Awakening, but the Government does insist that other individuals using the cloak of religion to use drugs indicate that the problems in enforcing the peyote laws would be overwhelming. The Government also points out that the requirements for membership in the Church of the Awakening are so nebulous that if the petitioners' request for an amendment were granted, there would be no feasible way to control the use or abuse of the drug. In fact, anyone who is able to sign his name to an application can become a member of the Church, use the exemption and claim First Amendment protection as a "shield" for whatever use he may wish to make of the drug. It is pointed out that should such an exemption be granted, the Government would have no way of curtailing the formation of other churches whose sole purpose would be to legalize drug use for their membership.

In pointing out the potential dangers to the individual's physical well-being, the Government lists and explores cellular death, lassitude, premature aging, decreased life span, leukemia, malignancies, and organ toxicities. The potential dangers to offspring include decreased growth rate, leukemia, fetal abnormalities, increased abortions, early abortions, infertility, and sterility. The dangers to the individual's psyche include psychosis, psychological dependence (including escapes from reality), and abuse due to cultural orientation. Additional dangers include suicides and crimes or harm to other individuals while the user is hallucinating. Symptoms observed are depression and psychotic reactions, including paranoia, suspicion, "flash backs," catatonic states, lassitude and laziness, confusion and impaired intellectual and psychomotor functions.

By exploring the unique situation of the Native American Church, the Government justifies the regulation allowing its use of peyote on the basis of the traditional legal and cultural status of the American Indians which is "sui-generis" in showing that the peyote sacrament in the Native American Church is different and distinct from that of the Church of the Awakening. The Government alleges the special membership requirements of the Native American Church and the overriding factor that peyote is essential and central to the religion, in that without peyote their religion would not and could not exist.

PETITIONERS' THEORY OF CASE

Petitioners claim that they have shown the use of peyote as a sacrament under the tenants of their church and that the experience engendered with the peyote "sacrament" goes to the very heart of their religion. Petitioners allege that the tenants of the Church are to strive towards the direct experience of God. They conclude "it is not the only way to find God, but it is a most important tool and many people would not find this experience without it."

Petitioners further allege that the peyote sacrament as practiced by the Church of the Awakening requires a serious religious intent. By demonstrating evidence of the beliefs of the petitioner and copetitioners and the religious nature of the ingestion of peyote, it is claimed that inquiry into the

validity of such beliefs is not permissible under the First Amendment. They contend that granting an exception to the Native American Church for its religious use of peyote and opposing like use by the petitioner and copetitioners is a violation by the Government of the establishment clause of the First Amendment. Petitioners claim that conceding that the Government may proscribe the religious use of peyote, a case justifying such proscription does not exist here. It is claimed in the area of religious freedom, only the gravest abuses endangering paramount interest give occasion for permissible limitation, and that no such abuse or danger has been advanced in the present case. Petitioners further go on to indicate that the Government's proof of the deleterious effect of these materials is weak and does not justify valid consideration.

SPECIALIZED FINDINGS OF FACT

1. Peyote is the common name of a plant presently classified botanically as *Lophophora Williamsii* Lemaire. It is a small, spineless, low growing cactus; carrot or turnip like in shape and size. Only the fleshy, rounded top appears above the soil. It is the pincushion-like top which when sliced off and dried becomes the hard, brittle disk shape button. This is the button which is used ceremoniously or otherwise to produce profound sensory and psychic phenomena attributed to peyote. The peyote cactus is native to the region of the Rio Grande Valley and southward.²

2. Peyote contains many active alkaloids. The least toxic alkaloid is mescaline.³ Three other alkaloids are identified as moderately toxic. These are anhalamine, anhalonidine and pelletine.⁴ The most toxic alkaloids found are anhalonine and lophophorine. For these latter two drugs, 0.0011 grams per kilogram is lethal for frogs.⁵ The absolute toxicities of all the alkaloids have not yet been determined.⁶ Studies have been made of the effects of these alkaloids individually, but it remains to be determined what the combined effect these substances, as they are found in the peyote button, is, and if there is an interaction of these substances which could produce an effect different from that initiated by each of the drugs used separately.⁷ Mescaline is an active substance⁸ which is the least toxic of the alkaloids in peyote and is known to constitute approximately 1.5 percent of the weight of the peyote button.⁹ Pelletine and anhalonidine have sedative effects. Lophophorine and anhalamine are strong convulsants similar in action to strychnine.¹⁰

3. Peyote is generally distributed in the form of dried buttons.¹¹ The ultimate dosage form and method of ingestion varies from chewing and ingesting the button to decocting the button to a tea-like liquid to be drunk, grinding the button to a powder to be enclosed in gelatin capsules to ease ingestion, or injecting a solution of the substance into the body.¹²

4. The emetic activity found shortly after ingestion of peyote or mescaline is described to a central effect as opposed to an irritant effect on the lining of the stomach.¹³ This effect is not self-limiting because variations in emetic response might not preclude the ingestion of a lethal dose.¹⁴ That the lethal dosage in humans is not known is emphatically brought out by petitioner John Aiken, who admits to the lack of scientific knowledge in this area.¹⁵ Vomiting or emesis, a recognized side reaction of ingestion of this drug can be in and of itself inherently dangerous to certain susceptible members of the population—for example, someone suffering from cardiovascular disease.¹⁶

5. Animal tests with both mescaline and LSD indicate a strong likelihood that ingestion of these substances will lead to fetal

abnormalities.¹⁷ Whether this effect is original or cumulative is not yet determined.¹⁸ Initial studies in this area are sufficient, when it comes to the matter of safeguarding the public health and welfare, to predict the comparability of mescaline to LSD¹⁹ as a teratogenic agent.²⁰ Because of peyote's accepted status as a hallucinogen and on the basis of submitted evidence that some of the manifestations and characteristics of other hallucinogens are indistinguishable from peyote and because of the relative paucity of conclusive research concerning peyote, it is reasonable to assume that the evidence submitted for other hallucinogens will apply to peyote.²¹ It is thus found that the potential dangers to offspring include decreased growth rate, fetal abnormalities, increased abortions, early abortions, infertility and sterility.²² Other dangers which are indicated are the possibility of leukemia, lassitude, and decreased life span.²³ The physiological effects of peyote are of physical and mental exhilaration.²⁴ At the onset, there is wakefulness, mild analgesia and a sensation of fullness in the stomach or loss of appetite which may lead to active nausea, a feeling of tightness in the chest, some muscular tetany, and heightened sensitivity to sound, color, form and texture. Later phases may include visions or hallucinations.

The paucity of human research conducted with regards to peyote, mescaline, and other related hallucinogens has disclosed controversy with respect to short term and long range effects on man.²⁵ There are indications of harmful, somatic and mutagenic effects.²⁶ It has been demonstrated that incurable psychosis can be induced because of the use of these drugs under certain situations.²⁷ It is established that there is no accurate screening procedure which would definitely identify any individual who might be prone to such a psychosis.²⁸

6. Peyote is a drug having a hallucinogenic effect within the meaning of 21 U.S.C. 201 (V) (3). The criteria applicable to the determination of whether a drug has a hallucinogenic effect is the consideration of whether the substance will produce hallucinations, illusions, delusions, or alteration of any of the following:

1. Orientation with respect to time or place.²⁹
2. Consciousness as evidenced by confused states, dreamlike revivals of past traumatic events or childhood memories.³⁰
3. Sensory perception as evidenced by visual illusions, synesthesia, distortion of space and perspective.³¹
4. Motor coordination.
5. Mood and affectivity as evidenced by anxiety, euphoria, hypomania, ecstasy, autistic withdrawal.³²
6. Ideation as evidenced by flight of ideas, ideas of reference, impairment of concentration and intelligence.³³
7. Personality as evidenced by depersonalization and derealization, impairment of conscience, and acquired social and cultural customs.³⁴

There is sufficient indications in the record which conclusively establish that peyote is in that class of substances as described above having a hallucinogenic effect.³⁵

7. That psychological harm may be precipitated by the ingestion of peyote is manifest.³⁶ Permanent psychological damage can occur when people have both good or bad "trips."³⁷ There is potential for personality disintegration and the breakdown of certain mechanisms needed to function effectively in society. With continued use over long periods of time, problems arise in focusing concentration. Memory failure occurs and there is a decrease in mathematical

ability. There may occur creeping paranoia or feelings of persecution, exaggerated feelings of self-confidence, or even growing underlying feelings of inferiority. There is exhibited passivity, loss of energy and lack of desire to do things, impulsiveness, and feelings of the futility of life and helplessness about one's future.³⁸

8. Up to 5,000 bad trips were noted by one of the witnesses. These bad trips were an immediate unpleasant experience for the subject and were compared to the psychological harm that occurs from the "good trips," in that one who experiences a "good trip" wishes to repeat the performance and may well build a psychological dependence for the continued experiencing of the sensations produced by the drug.³⁹

9. There is evidence of subjective correlations of peyote to religious insight and personal psychological and mental gain. These experiences may vary with the conditioning and the set and setting of the individual at the time of ingestion of the drug. These attributes are described by some as unreal ad psychedelic hypocrisy.⁴⁰

There is no approved medical use of peyote in the United States; however, experimentation with hallucinogens, particularly LSD, is being conducted with terminal patients, alcoholics and others to determine the therapeutic utility.⁴¹ While one report was favorable, the majority of the reports dealing with alcoholics appeared negative for medical value.⁴²

10. The set or setting of an area in which the subject is to ingest peyote and the subject's preparation is important to the immediate or initial outcome precipitated by the ingestion of the drug. It does not, however, guarantee a favorable immediate reaction, but it does lessen the probability of a traumatic experience. Precipitous problems do occur less frequently in such settings, but they do occur.⁴³

11. That the administration of peyote must be given under very special circumstances is uncontroverted in the record. The controversy arises as to the particular circumstances themselves. Likewise, the necessity of trained personnel in attendance is unquestioned. The degree of training, however, raises grave conflicts of opinion.⁴⁴

A screening of subjects is necessary before ingestion of the drug to insure that certain types of personalities are rejected. This screening is of a psychological nature. If after the screening and ingestion of peyote a reaction sufficient in intensity requires the termination of the "experience," a physician must first determine the problem, and second, administer the necessary antidote drug, i.e., chlorpromazine, pentothal, or similar type drugs.⁴⁵

The Church of the Awakening requires "monitors, ministers and a physician on call." Ministers and monitors need not possess, according to the petitioners' requirements, the ordinary scholastic and licensing requirements to practice psychology, psychiatry, or medicine, and yet they are expected to make psychological, medical, and psychiatric determination.⁴⁶

Of the conditions precedent to the appointment of a monitor or minister of the Church, one or more of the listed requirements may be waived by the "Directors."⁴⁷

12. The Church of the Awakening is a loosely formed group incorporated by Drs. John and Louise Aiken for the purpose of studying and developing the spiritual nature of man in order for man to recognize his oneness with the cosmos, and to find purpose and meaning of life. The thing that is most important and fundamental to the beliefs of petitioning Church is the "mystical experience," or the attainment of the goal of "religious experience."⁴⁸ It is not incon-

sistent for members to be practicing members of other religious entities or religions.⁴⁹

The Church desires to provide for those who request it, the opportunity to have a psychedelic experience which is a sacrament of the Church. A psychedelic experience is defined as that experience which occurs following the ingestion of peyote or like substances which may be found useful for the purpose of increasing man's understanding of himself.⁵⁰ Other psychedelic drugs, if legal and safe, could be used rather than peyote if the latter remains illegal.⁵¹ There is no one single drug which is considered by the Church to be fundamental to its religion.⁵²

13. The Church of the Awakening exists today and its members do not partake of hallucinogenic substances.⁵³ There are members of the Church to whom peyote is non-essential.⁵⁴ The one fundamental fact is that the mystical or religious experience is fundamental to the Church and that drugs are not the only means to achieve this end.⁵⁵ The mystical experience is achieved more quickly with peyote.⁵⁶

14. The Board of Directors is a loosely knit group with the membership of some of the Board unknown to other members of the Board; likewise, the Board members are not fully knowledgeable of the monitors of the Church. There is a clear and distinct possibility that the membership of the Board of Directors can change—that it may change is fact.⁵⁷

15. The sole membership requirement is the filling out of a membership blank which implies the understanding of the objectives of the Church. There is no indication of any means by which a person wanting to become a member of the Church may be denied membership. The precise membership in the Church and their dates of membership have not been determined.⁵⁸

16. There has been no policy established as to the age at which peyote ingestion is to be limited.⁵⁹

17. Sacrament in the Church is described as a sacred experience, not a fundamental something essential for salvation or other religious ends. Sacrament is the sacred experience.⁶⁰ The Church believes in the use of any hallucinogen so long as it is legal.⁶¹ There are no medically approved hallucinogens in the United States today.

18. In the attainment of its goal of the religious experience, the requirement for monitors in the Church is extremely flexible and can be changed readily at the will of the Board of Directors.⁶² The original requirements as set forth in the petitioners' petition on page 17 et sequitur have been changed as manifested by petitioners' exhibit No. 5 during the course of the hearing. Along with changes in the procedures for the ingestion of peyote, using the latter procedures and qualifications, the sacrament is to be dispensed only at the National Center of the Church of the Awakening (which is not yet existent) under the direct supervision of an ordained minister of the Church.⁶³

Competent medical assistants shall be available but not necessarily on hand.⁶⁴ A candidate shall have a minimum of a week available for the experience. Two days of preparation are required utilizing meditation, music, relaxation, self-examination and the development of an increased rapport with the minister or certified monitor.⁶⁵ Medical assistance shall be nearby (i.e., on call) but not necessarily present during the experience.⁶⁶ One day shall be devoted for the experience itself and the four subsequent days for orientation in light of new perspectives hoped to be achieved.⁶⁷

19. Group participation may be instituted for those who have previously achieved at least three satisfactory individual experiences. There are no criteria that have been

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established to indicate what constitutes a satisfactory individual experience or an unsatisfactory one. The group shall have no more than five members—each having a mutually satisfactory rapport with the others, and may be guided or accepted by a single minister on a given day. The minister may not partake of the substance and he shall be assisted by at least one certified monitor or monitor candidate. The latter also shall not partake of the substance.⁶³

20. The peyote will be available only to those who have been members of the Church for a minimum of one year and whose personality and motivation are known to a minister of the Church.⁶⁴ After the first experience no member may participate in the experience oftener than three times a year.⁶⁵ The subject shall be under supervision for 24 hours after the beginning of the experience.⁶⁶

21. The qualifications and appointment of monitors are as follows: Minimum age, 25 years. Education should include not less than 2 years of college and preferably a bachelor's degree. Personality should be outgoing and capable of developing rapport with a variety of people. He should be oriented towards service rather than profit or status. Experience should include at least five personal individual psychedelic experiences; the observance of five given by a minister or certified monitor; and monitoring five under the supervision of a minister or certified monitor. He may then be recommended to the Board of Directors for certification. The five personal individual psychedelic experiences need not be within the framework of the Church and could definitely include individual non-church oriented ingestions of hallucinogens.⁶⁷

22. There are numerous other means to attain the religious experience desired by the petitioners. The experience may be achieved by meditation, fasting, hypnosis, deliberation, and contact with other members of the Church. The Church presently exists utilizing these other methods.⁶⁸

23. Peyote has an entirely different and individual meaning to the members of the Native American Church. It is essential to their religion; it is a deity; it is a subject of worship as well as an instrument of worship and without it, the religion would cease to exist and could not function.⁶⁹

24. Indians in the United States are treated differently from other citizens. Their situation is similar to sovereign nations in that their relationship with the Federal Government is direct and not through a State or other municipal authority. To the Indians on a reservation, there is a separate Bill of constitutional rights, 25 U.S.C.A. 1301 et seq.⁷⁰

25. That mescaline or peyote is abusible and has a ready market among the drug culture throughout the nation is evidenced by the number of clandestine laboratories which have been discovered by Federal Agents.⁷¹

CONCLUSIONS

While the record of the hearing and the briefs presented by the Church of the Awakening and the Government in this case are voluminous, the issues are relatively clear cut.

1. Do the precepts of the Church of the Awakening constitute a religion?

2. Is the use of peyote, or other hallucinogenic drugs essential to the Church in its religious practices?

3. Would the denial of the requested exemption constitute an infringement on the petitioners' rights to exercise their religion?

4. Would the Church's use of peyote pose a substantial risk to health and life, or to the social well-being or the convenience of society?

5. Does the granting of an exemption for

the use of peyote to the Native American Church of North America and not to the Church of the Awakening violate the petitioner's constitutional rights?

It is the opinion of the Hearing Officer after review and study of the record that the Church of the Awakening is not a religion in the true sense of the word, but a loose confederation of kindred souls whose purpose is to explore the mystical boundaries of humanity through the use of hallucinogenic drugs and other means.

Peyote obviously is not essential to the existence of the Church of the Awakening. The Church has existed and does exist without the use of the drug. Other means may and are being utilized to achieve the fundamental goals of the Church. Granted, arguendo, that drugs can facilitate or precipitate a religious or mystical experience, the record shows that the experience can be reached through less convenient means such as fasting, prayer, meditation, hypnosis, etc. Therefore, denial of the exemption would not infringe on the rights of the petitioners to exercise their religion. The fact that the Church is functioning and has been functioning since 1965, the year of the enactment of the Drug Abuse Control Amendments, is prima facie evidence that it can exist and function without peyote.

The Government has direct responsibility and interest in the control of certain hallucinogenic drugs under the Drug Abuse Control Amendments of 1965. Peyote has been designated as a drug with a potential for abuse because of its hallucinogenic effect and it is subject to control under the Amendments.

This law was passed by the Congress to improve Federal controls over depressant, stimulant, and hallucinogenic drugs because their illegal manufacture or diversion into the illicit market posed a danger to the public health and safety. The Government's interest for the public welfare is sufficient to override the inconvenience that refusal of the exemption might cause to the petitioners.

Peyote is an inherently dangerous substance capable of producing psychosis and other psychological harm as well as physical problems. There is insufficient knowledge in the areas of medicine and science to permit the promiscuous unleashing of this drug without adequate medical or psychiatric supervision. The Church's proposed methods for the psychological and medical screening and supervision of members before, during and after ingestion of peyote are insufficient to provide for the safety of users. To administer this drug and other hallucinogens requires careful procedures. A physician is essential to the experience. Likewise, screening of the prospective user must be done by one capable of diagnosing certain psychological and medical factors which preclude the use of nonmedical personnel proposed by the Church.

The Church of the Awakening is generally different from the Native American Church of North America which is sui generis. The Native American Church is composed basically of Indians, who are treated differently from the ordinary citizenry of the United States. The relationship with the Federal Government has been established through law and treaty. The use of peyote in the Native American Church is different from and in no way similar to use of peyote proposed by the petitioners. Peyote in the Native American Church is a deity—a sacrament essential to the religion. Without peyote, the religion could not exist and would in fact, cease to function. This is not so with the Church of the Awakening. In the Church of the Awakening, it is an added attraction or an expeditious means to an end.

Both the First and Fourth Amendment application of the Constitution to the Native American Church of North America is different from the application of those clauses to the members of the Church of the Awakening.

There is a decided facility for drug abusers to enter into the membership of the Church of the Awakening. This would provide a ready means to acquire immunity from the law if the petition were granted. "Bad faith" of future members and monitors is a real problem under the proposed requirements enumerated by the Church. Granting of the exemption would create serious breaches in drug abuse legislation and open the door to pseudoreligions conceived for the purpose of circumventing drug laws intended to control the misuse of drugs.

Accordingly, it is recommended that this report be adopted and the petition of the Church of the Awakening be denied.

Dated: January 16, 1970.

FREDERICK M. GARFIELD,
Hearing Officer.

FOOTNOTES

These footnotes are intended to be a guide only in demonstrating some of the evidence that established the facts in point. It is not intended to show the degree of importance or the totality of the evidence relied upon.

¹ Responsibility for the enforcement of the Drug Abuse Control Amendments of 1965 was transferred from the Food and Drug Administration to the Bureau of Narcotics and Dangerous Drugs on April 8, 1968, by Presidential Reorganization Plan No. 1 of 1968.

² GD Exhibit #1.

³ SeEVERS Deposition p. 15; GD Exhibit #1, p. 1; Merck Index p. 663.

⁴ Merck Index p. 787; GD Exhibit #1.

⁵ SeEVERS Deposition pp. 15-18; GD Exhibit #1 p. 1; Merck Index p. 625.

⁶ SeEVERS Deposition p. 15; Hollister Deposition p. 7.

⁷ GD Exhibit #1, pp. 9-12; SeEVERS Deposition pp. 15-18.

⁸ TR. p. 233.

⁹ GD Exhibit #1, p. 32.

¹⁰ SeEVERS Deposition pp. 15-18; GD Exhibit #1.

¹¹ SeEVERS Deposition pp. 12-13.

¹² TR. p. 57.

¹³ SeEVERS Deposition p. 10.

¹⁴ SeEVERS Deposition pp. 38-40; Hollister Deposition pp. 34-36, pp. 40-42.

¹⁵ Hollister Deposition pp. 13-16; TR. 228-232.

¹⁶ SeEVERS Deposition p. 38.

¹⁷ TR. p. 464, pp. 758-769, pp. 771-773.

¹⁸ TR. p. 471.

¹⁹ TR. p. 670.

²⁰ Government Exhibit #7; Government Exhibit #8; Government Exhibit #9; Government Exhibit #10; GD #2; GD #3; GD #6; TR. p. 764, pp. 589-594.

²¹ *Ibid*; Hollister Deposition pp. 7-14; WIKLER Deposition pp. 4-19, p. 31; TR. p. 824.

²² TR. p. 464, pp. 467-468, pp. 588-594, pp. 758-769, pp. 914-920.

²³ Government Exhibit #11; Government Exhibit #12; Government Exhibit #13.

²⁴ TR. p. 613.

²⁵ TR. pp. 758-769.

²⁶ TR. pp. 611-614, pp. 761-769.

²⁷ SeEVERS Deposition pp. 69-70; TR. pp. 611-614.

²⁸ SeEVERS Deposition pp. 46-49; TR. pp. 616-618.

²⁹ TR. p. 551.

³⁰ TR. p. 652.

³¹ TR. pp. 551-552, p. 558, pp. 606-608, pp. 650-651.

³² TR. pp. 606-608, pp. 650-651, pp. 615-619; TR. 874-876.

See footnotes at end of document.

- ³³ TR. p. 551, p. 553, pp. 650-653.
³⁴ TR. pp. 615-619.
³⁵ Wikler Deposition pp. 4-7; Hollister Deposition pp. 7-9, p. 13.
³⁶ TR. pp. 874-876.
³⁷ TR. pp. 594-597, pp. 612-614; Wikler Deposition pp. 8-19; Hollister Deposition pp. 7-9, pp. 13-14.
³⁸ TR. pp. 615-619.
³⁹ TR. p. 471, pp. 613-619, p. 640.
⁴⁰ TR. pp. 351-431, pp. 463-464, p. 612, pp. 619-632, pp. 822-830; Petitioners Exhibit #7; Petitioners Exhibit #8; Petitioners Exhibit #9; Petitioners Exhibit #10; Government Exhibit #5; H. Smith Deposition pp. 13-18, pp. 23-25, pp. 32-38.
⁴¹ Petitioners Exhibit #11; Petitioners Exhibit #12; TR. pp. 370-395.
⁴² TR. pp. 370-384.
⁴³ Hollister Deposition p. 11; Aiken Affidavit in Petition, p. 7, pp. 12-13; TR. p. 388, pp. 596-598, pp. 600-605, p. 910.
⁴⁴ SeEVERS Deposition pp. 8-12, p. 33; TR. pp. 295-302, pp. 446-447, pp. 461-463, pp. 876-884.
⁴⁵ Wikler Deposition pp. 8-12, pp. 33-34; Hollister Deposition pp. 36-40; TR. pp. 214-218, pp. 295-301, p. 448, p. 604, pp. 876-887.
⁴⁶ SeEVERS Deposition pp. 46-49; Wikler Deposition pp. 8-12; TR. pp. 446-463, pp. 608-612.
⁴⁷ TR. pp. 210-214, p. 478.
⁴⁸ Aiken Affidavit in Petition pp. 11-18; TR. p. 133, p. 179, pp. 188-191.
⁴⁹ H. Smith Deposition pp. 27-29, pp. 38-42.
⁵⁰ TR. pp. 182-183.
⁵¹ TR. pp. 183-186, pp. 220-222.
⁵² TR. pp. 183-186, pp. 220-222, pp. 545-554, p. 911; Government Exhibit #2.
⁵³ TR. p. 180, p. 913.
⁵⁴ TR. pp. 197-198, pp. 544-548.
⁵⁵ TR. p. 180, pp. 188-189, pp. 203-210, pp. 221-222.
⁵⁶ H. Smith Deposition pp. 43-44; TR. pp. 203-210, pp. 221-222, pp. 544-548.
⁵⁷ TR. p. 140, p. 290; H. Smith Deposition pp. 57-68.
⁵⁸ TR. p. 141, p. 247; H. Smith Deposition pp. 41-42, p. 51, p. 60.
⁵⁹ TR. pp. 249-250, pp. 920-921.
⁶⁰ TR. pp. 144-145, pp. 247-248, p. 903.
⁶¹ TR. p. 134, p. 177, p. 183.
⁶² H. Smith Deposition pp. 61-68.
⁶³ TR. p. 173, pp. 213-214, p. 325.
⁶⁴ TR. pp. 214-218, pp. 295-301, pp. 877-884.
⁶⁵ TR. p. 325, pp. 877-884.
⁶⁶ TR. pp. 214-218, pp. 295-301, pp. 877-884.
⁶⁷ TR. pp. 156-171, pp. 174-175, pp. 877-884; Petitioners Exhibit #4; Petitioners Exhibit #5; Aiken Affidavit in Petition pp. 7-8, p. 12.
⁶⁸ Aiken Affidavit in Petition p. 7.
⁶⁹ TR. p. 915.
⁷⁰ TR. pp. 194-202, pp. 646-647, p. 593, p. 325.
⁷¹ TR. p. 175; Petitioners Exhibit #5; Aiken Affidavit in Petition pp. 7-8, p. 12.
⁷² TR. pp. 102-103, pp. 139-140, pp. 212-213, p. 326, p. 454; H. Smith Deposition p. 49; Petitioners Exhibit #5.
⁷³ TR. p. 145, p. 180, pp. 203-210, pp. 221-222, p. 238, p. 294, pp. 544-546, p. 621, pp. 913-915; H. Smith Deposition p. 50.
⁷⁴ TR. pp. 104-111, pp. 240-242, pp. 266-277, pp. 487-488, p. 702, pp. 707-710; H. Smith Deposition pp. 41-49; Government Exhibit #13; Government Exhibit #12; Government Exhibit #11.
⁷⁵ TR. pp. 580-581, pp. 675-697, pp. 806-818; U.S. Constitution Article I, Section 8, Chapter 3.
⁷⁶ TR. pp. 782-783, pp. 787-789.

Therefore, it is ordered, That it is the decision of the Director of the Bureau of Narcotics and Dangerous Drugs that the foregoing report, findings of fact, conclusions and recommendations of the hear-

ing examiner be accepted in their entirety and that the petition of the Church of the Awakening is denied.

It is contemplated that the subsequent final order in this matter will have an effective date that will be 30 days from its date of publication in the FEDERAL REGISTER.

Any interested person whose appearance was filed at the hearing may, within 30 days from the date of publication of this tentative order in the FEDERAL REGISTER, file with the Office of the Chief Counsel, Bureau of Narcotics and Dangerous Drugs, Department of Justice, 1405 I Street NW., Washington, D.C. 20537, written exceptions thereto. Exceptions shall point out with particularity the alleged errors in the findings of fact and proposed order, and shall contain specified references to the pages of the transcript of testimony or to the exhibits on which the exceptions are based. Exceptions and accompanying briefs should be submitted in quintuplicate.

Dated: February 5, 1970.

JOHN E. INGERSOLL,
 Director, Bureau of Narcotics and
 Dangerous Drugs.

[F.R. Doc. 70-1816; Filed, Feb. 11, 1970;
 8:52 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1006, 1012, 1013]

[Docket Nos. AO-356-A4, AO-347-A8,
 AO-288-A16]

MILK IN UPPER FLORIDA, TAMPA BAY, AND SOUTHEASTERN FLORIDA MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and to Orders

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Upper Florida, Tampa Bay, and Southeastern Florida marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900); at Orlando, Fla., on April 9-10, 1968, pursuant to notice thereof issued on March 21, 1968 (33 F.R. 4995).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on December 18, 1969 (34 F.R. 20053; F.R. Doc. 69-15195) filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modification:

A new paragraph is added immediately following the second paragraph beginning on page 20055.

The material issues on the record of the hearing relate to:

1. Class I prices; and
2. Revision of classification provisions.

This decision deals with issue No. 2 only. Issue No. 1 was dealt with in an earlier decision.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

2. *Revision of classification provisions.* The three Florida orders should be amended to combine present Class II and Class I uses into a single Class I, and to add certain uses now Class III in the Class I category. The Class I price should be adjusted to offset the effect of the increased Class I utilization resulting from the proposed change.

The Tampa Bay and Upper Florida orders now provide for three classes of utilization; the Southeastern Florida order has four classes. Classes I, II, and III in the three orders are basically the same. The Southeastern Florida Class IV classification applies only to milk, the skim milk portion of which is (1) disposed of for fertilizer or livestock feed, or (2) "dumped" by the handler after such prior notification as the market administrator may require.

Class I now includes all skim milk and butterfat that is either disposed of in the form of a fluid milk product or is not accounted for in another class. Fluid milk product has been defined to mean milk, flavored milk, and skim milk. The three Florida orders were amended, effective January 1, 1970, to include filled milk in the fluid milk product definition.

Class II milk is the skim milk and butterfat that is either disposed of in the form of a Class II product (cream, sour cream, half and half, acidophilus milk, and chocolate drink) or is in a handler's inventory of fluid milk products, both packaged or in bulk at the end of the month.

Class III includes the skim milk and butterfat used to produce any product other than a fluid milk product or Class II product. Such Class III products are: Frozen desserts (e.g., ice cream, ice cream mix), eggnog, yogurt, aerated cream products, milkshake mix, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk and sterilized products in hermetically sealed containers.

Other dispositions included in the present Class III are: (1) Skim milk and butterfat in fluid milk products and in Class II products disposed of for livestock feed or dumped by a handler (except such dispositions classified in Class IV in the Southeastern Florida order); (2) skim milk represented by the nonfat solids added to a fluid milk product or Class II product which is in excess of an equivalent volume of such product prior to the addition, and (3) skim milk