§ 240.17a-5 Reports to be made by certain exchange members, brokers and dealers.

(a) * * *

(b) * * *

(iv) the member, broker or dealer shall submit an accountants report which (1) describes the scope of the examination, (2) states the accountants opinion that Part III presents fairly the statistical information required to be reported and (3) comments upon any material inadequacies found to exist upon the scope of this preliminary examination in (A) the accounting system, (B) the internal accounting control, (C) procedures for safeguarding securites, and (D) indicating any corrective action taken or proposed.

(b) The following questions shall be answered by the respondent.

The Audit Requirements of Form X-17a-5 are hereby made by inserting a new paragraph after the first full paragraph and making a conforming amendment to the paragraph following the newly inserted paragraph of those requirements as follows:

The audit shall be made in accordance with generally accepted auditing standards and shall include a review of the accounting system, the internal accounting control and procedures for safeguarding securities, including appropriate tests thereof for the period since the prior examination date. It shall include all procedures necessary under the circumstances to substantiate the assets and liabilities of the firm and its subsidiaries. The firm shall state whether the audit was made in accordance with generally accepted auditing standards and include a report of the independent public accountant indicating any corrective action taken or proposed.

The independent public accountant may perform audit procedures at any time which he may deem appropriate; however, if the procedures prescribed in Items 2, 3, 4 and 6(c)-(g), excluding Item 6(e)(v), are performed at a date other than the audit date, then all such aforementioned procedures shall be performed as of the same date, which shall not be more than 180 days prior to the financial statement date.

The scope of the audit shall include the following procedures, but nothing herein shall be construed as limiting the audit or permitting the omission of any additional audit procedures which an independent public accountant would deem necessary under the circumstances. As part of his audit the independent public accountant shall:

1. Securities (Note 2):
   (a) Describe differences without in other related money balances:
      (i) Long.
      (ii) Short.
   (b) Securities differences with in other related money balances:
      (i) Long and related money balances.
      (ii) Short and related money balances.

2. Commodities (Note 3):
   (a) Number of items of unsecured margined commodities:
      (i) Long.
      (ii) Short.
   (b) Number of accounts with interest and related money balances on accounts for commitments other than proprietary and customers' positions:
      (i) Long.
      (ii) Short.

3. Money Balances:
   (a) Unsecured items reflecting differences between the appropriate general ledger control accounts and money balances on requests for confirmations, including customers' statements:
      (i) Long.
      (ii) Short.
   (b) Number of items and money balances reported in response to confirmation requests:
      (i) Long.
      (ii) Short.

4. Aged Item as of the date of the last communications:
   (a) Number of items, money balances and long security valuations of falls to deliver:
      (i) 30 to 60 days old.
      (ii) 60 to 90 days old.
      (iii) Over 90 days old.
   (b) Number of items, money balances and short security valuations of falls to receive over 90 days old.
   (c) Number of items and money balances of transfer orders over 60 days old which had not been confirmed in writing within such 60 day period by the transfer agent.
   (d) Number of items and money balances of stock dividends and similar distributions receivable outstanding more than 90 days after payable date.

Notes

(1) The terms long and short as used in reporting securities and commodity differences shall reflect the differences to the independent public accountant as to the financial condition of the respondent at that date. Based upon such audit, the accountant shall comment upon any material inadequacies found to exist in:
   (a) The accounting system;
   (b) The internal accounting control;
   (c) Procedures for safeguarding securities;
   (d) The practices and procedures employed in complying with Rule 17a-13 and in the resolution of securities differences; and (e) shall indicate any corrective action taken or proposed.

Title 21—Food and Drugs

CHAPTER II—DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

PART 1201—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

Methaqualone and Its Salts

A notice dated April 6, 1973, was published in the Federal Register on April 11, 1973, 38 FR 9170, as amended on April 17, 1973, and published on
April 23, 1973 (38 FR 10010), proposed placement of methaqualone and its salts in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91–513). All interested persons were given thirty days after publication to submit their objections, comments, or requests for hearing. On May 14, 1973, Covington and Burling, Counsel for William H. Rorer, Inc. (Rorer), a principal manufacturer and distributor of methaqualone under the trade name Quaalude, requested a hearing concerning the proposed placement of the drug methaqualone in Schedule II.

Subsequent to Rorer's request for a hearing, prehearing conferences were held on June 15 and June 20, 1973. The evidentiary hearings were held on July 17 and August 1 and 2, 1973. The record was closed on the last day of hearings and proposed findings and replies were filed by the parties on August 31 and September 14, 1973.

As a result of those hearings, Administrative Law Judge Theodor P. von Brand, submitted the following Recommended Decision which has been reviewed and adopted without modification by the Acting Administrator, Drug Enforcement Administration.

Before the United States Department of Justice, Drug Enforcement Administration

In the matter of scheduling of Methaqualone and its salts (Docket No. 73–11).

RECOMMENDED DECISION


PRELIMINARY STATEMENT

This is a rulemaking proceeding pursuant to the provisions of the Controlled Substances Act, Public Law 91–513 (1970), 21 U.S.C. Section 801 et seq. By notice dated April 6, 1973, an amendment of 21 CFR 1908.12, by the Director of the Bureau of Narcotics and Dangerous Drugs (BNDND) found that methaqualone and its salts: 1. Have a high potential for abuse; 2. Have a currently accepted medical use in treatment of the United States; and, 3. May produce severe physical and psychological dependence.

On the basis of those findings, the Director proposed an amendment of 21 CFR 1908.12, by listing the drug methaqualone in Schedule II pursuant to the provisions of the Act.

May 14, 1973, William H. Rorer, Inc. (Rorer) requested a hearing concerning the proposed amendment of the list of drugs contained in the Bureau of Narcotics and Dangerous Drugs (BNDND) 4 which is an ingredient in the drug methaqualone and its salts. (ALJ Exhibit 4).

In its comments on the Bureau's proposal, Rorer contended essentially that the Bureau had failed to meet one of the statutory prerequisites to the listing of the drug under Schedule II because it failed to prove that the drug "may lead to severe psychological or physical dependence" (ALJ Exhibit 7).

Subsequent to Rorer's request for hearing, prehearing conferences were held on June 15 and June 20, 1973. The evidentiary hearings were held on July 17 and August 1 and 2, 1973. The record was closed on the last day of hearings and proposed findings and replies were filed by the parties on August 31 and September 14, 1973.

Rorer does not contest the Drug Enforcement Administration's findings that methaqualone and its salts:

1. Have a high potential for abuse; and
2. Have a currently accepted medical use in treatment of the United States.

The sole issue to be decided is whether the abuse of methaqualone "may lead to severe psychological or physical dependence.

This matter is now before the undersigned for final consideration of DEA's notice of proposed rulemaking. Rorer's comments and request for a hearing were received on the day the proposed findings of fact, conclusions and briefs filed by counsel for the Government and for Rorer were due. This was the subject of much debate and argument. The undersigned, having considered the entire record herein, makes the following recommendations of fact and conclusions drawn therefrom:

RECOMMENDED FINDINGS OF FACT

1. Methaqualone is a depressant drug of the sedative hypnotic group (Fort 54).
2. A drug is any biologically active substance that alters the physiology or chemistry of the body whether used in the treatment of illness or used for nonmedical social purposes (Fort 53).
3. The psychoactive or mind-altering category of drugs comprises those drugs whose primary effect is on the mind or consciousness of the individual (Fort 53).
4. The central nervous system depressants are drugs that relieve anxiety (sedatives) or induce sleep (hypnotics) (Fort 53).
5. The depressant drugs are one of the major subtypes of the psychoactive or mind-altering drugs. They decrease or dampen the electrical and chemical activity of the brain by acting on the frontal areas and then by progressive dosages, spread to involve the lower centers of the brain on to and including control of respiration and heart action (Fort 53-54).
6. The depressant drugs are comprised of the sedative hypnotic group which includes the barbiturates, methaqualone, and a variety of other drugs. The barbiturates such as heroin, morphine, codeine, and methadone are also included among the depressant drugs (Fort 54).
7. The sedative hypnotic drugs which work on the central nervous system, tend to produce drowsiness, diminish alertness and decrease inhibitions. They impair muscular coordination and to some extent vision, as well as judgment and reflex activity. These results vary with the dosage consumed (Fort 54-55).

The short-term effect of a large dose of a depressant drug or of a sedative hypnotic drug may progress into stupor and coma. If the dose is sufficient in a concentrated drug the electric activity with the terminal stages of the individual's coma will sometimes involve convulsions or chronic movements of the body and a variety of other symptoms (Fort 55).

The standard drug in the sedative hypnotic class is barbiturate (Brown 210). However, the close chemical relationship of methaqualone, and the barbiturates in their properties of the chemical and pharmaceutical properties of this group of drugs (Brown 210), as well as the pharmacology and biochemistry of these drugs, mean that it is almost indistinguishable from the short-acting barbiturates (Brown 218, 232).

The accepted medical use for the barbiturate drugs is to relieve tension, anxiety, stress, or to induce sleep. Another common use is as an adjunct in the treatment of certain forms of epilepsy and as a preanesthetic medication (Fort 55).

Methaqualone, like the barbiturates, is medically prescribed for sedation or for the induction of sleep. It is also used as a hypnotic, namely, sleep induction, would be 300 milligrams. Methaqualone would be closest to the short-acting barbiturates such as pentobarbital and secobarbital. By and large, it is meant that the drug has a quick onset of action somewhere between two and six hours (Fort 55-56).

The therapeutic dose of methaqualone for sedation would be 75 to 150 milligrams. There is an increasing practice of using the larger tablet, namely, 150 milligrams although 75 milligrams was previously indicated as satisfactory. A therapeutic dose for hypnotics, namely, sleep induction, would be 300 milligrams. The drug is also manufactured in tablets of 400 milligrams and 500 milligrams (Fort 58).

8. Use of a drug means that the person has consumed it. Abuse of a drug means that part of drug use where heavy use is measureably impair health, and/or social or vocational function. For example, drug abuse may impair the body organs such as the liver, impair faculties while driving, or lead to interpersonal conflict associated with heavy use of the drug (Fort 59-70).

9. Physical dependence means addiction and includes the elements of tolerance and withdrawal illness or abstinence syndrome (Fort 59, 11, 74).

10. Tolerance is an adaptive process by the body's cells or the body as a whole to a drug composed with the frontal areas and then by progressive dosages, spread to involve the lower centers of the brain on to and including control of respiration and heart action (Fort 53-54). The prescriptive condition of tolerance is that an individual must take increasing amounts of a particular substance to obtain the same effect (Matthew 253).

Tolerance is a part of the withdrawal syndrome since it is highly probable that an individual who has become tolerant to a drug will exhibit the withdrawal or abstinence syndrome when the drug is stopped (Matthew 253-254). In the case of the sedative hypnotics, tolerance and withdrawal syndromes always go together (Matthew 254).

11. The abstinence syndrome is evidenced by symptoms such as anxiety, restlessness, a fact pulse, and frequently, sweating. This may progress through various stages to toxic psychosis and epileptic fits (Matthew 255).

Toxic psychosis is characterized by hallucinations and delusions similar to delirium tremens from alcohol withdrawal (Matthew 259).

The opinion of Dr. Brown, who is a clinical biochemist, is entitled to particular weight on this point.

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12. Severity of physical dependence is measured primarily in terms of the duration and intensity of withdrawal symptoms (Wieland 438).

13. The barbiturate-alcohol type dependence is the severest kind of physical or psychological dependence occurring with the mind-altering drugs (Fort 100-01, Deutsch 47-49). In the case of sedative-hypnotic dependence, the patient's need for continuous involvement and withdrawal will precipitate serious syndromes such as convulsions, delirium, and coma, each of which can be life threatening (Deutsch 47).

While withdrawal may be fatal in the case of the sedative hypnotic drugs, this does not occur in the case of narcotics (Fort 79).

14. A clinical study on 116 patients poisoned with methaqualone correlating blood levels of the drug with degree of consciousness, objectively demonstrated the development of tolerance in the case of methaqualone with respect to 42 individuals (Brown 219-20, Matthew 266-97; Government Exhbit 20).

Tolerance to methaqualone on the part of seven patients was established by the administration of a sodium pentobarbital 1 tolerance test (Fort 79). Such patients showed no evidence of benefit from the use of pentobarbital for the purpose of treatment, the average patient requiring more than 200 milligrams of sodium pentobarbital to take his place on the major withdrawal symptoms such as convulsions and toxic psychosis, which are life threatening (Deutsch 464-470).

15. Proof that individuals may become tolerant to methaqualone, the evidence for abuse of this drug may lead to physical dependence. In the sense of the sedative hypnotic drugs, methaqualone is one of the indicia of the withdrawal syndrome (Finding 10, supra).

16. The fact that sedative hypnotic drugs can be cross-substituted indicates the lack of equal dependence liability (Fort 86-87).

17. In the case of withdrawal from methaqualone, a patient would be expected to go through the minor side effects appearing after eight hours or more. These symptoms would then continue over the next 24 to 28 hours. The patient would then have a significant chance of going on to the major withdrawal symptoms such as convulsions, organic psychosis, and disorientation (Fort 86).

A computer study of the symptoms of patients, who by history had taken methaqualone daily, demonstrated that they could not distinguish the symptoms from the withdrawal syndrome. A study of the effects of withdrawing a patient from methaqualone exhibited a craving for the drug lasting from two weeks to a month or more, after cessation of the drug and use of the drug despite social pressure (Deutsch 477).

18. Abuse of the drug may lead to severe psychological dependence (Deutsch 477, Fort 116, 107-08, Findings 20-22, supra).

**DISCUSSION**

This is a case of first impression. It is evident that the first controlled rulemaking process under the Controlled Substances Act pertaining to the scheduling of a drug under Section 202 of the statute (21 U.S.C. Section 812) is affected by the drug misuse of the witnesses and certain of the exhibits as well as the inferences which may be drawn therefrom.

It is Roper's position that the term "may lead to" should be construed as meaning "caused in a substantial percentage of cases" to severe psychological or physical dependence. DEA argues on the contrary, that the term "may lead to" does not mean that the evidentiary under the Controlled Substances Act may be found to support the contention that the drug is safe and that the patients of the witness are dependent on the drug. Therefore, there is no evidence to support the conclusion that the witnesses are dependent on the drug. The court has found that the evidence is insufficient to support the conclusion that the witnesses are dependent on the drug.

**Footnotes**

1 Pentobarbital is a short-acting barbiturate.

2 Dr. Matthew of the Regional Poisoning Treatment Center in Royal Infirmary in Edinburgh, Unite Kingdom, has personally observed about 50 individuals severely addicted to methaqualone (258).

3 See Wieland, Tr. 441.
of the DEA witnesses, based on their observation of patients and evaluation of the histories of drug users constitute such an exercise of judgment and should be regarded as reliable. Finally, the view of the DEA witnesses that the abstinence syndrome is best established in an empirical manner is evidently an accepted scientific concept which should not be rejected as speculative.

Turning to the issue of psychological dependence, the testimony of the DEA experts, and in particular, that of Dr. Deutsch, who observed the behavior of methaqualone abusers is persuasive. Certainly, his findings based on detailed histories cannot be considered as conjectural. The opinion evidence of the DEA witnesses compels the finding that there is a probability that abuse of methaqualone will result in severe psychological dependence. Consideration has been given to the testimony of Dr. Wieland that although there may be cases of methaqualone abuse leading to severe psychological dependence, this “is not dealing in probabilities.” (Tr. 687). To the extent that Dr. Wieland’s views on this point conflict with those of Dr. Deutsch, the opinion of the latter appears entitled to more weight in this empirical phase of the case on this point demonstrated by the record.

Since an individual may have severe psychological dependence without exhibiting symptoms of physical withdrawal, the fortuitous observation of the full clinical course of withdrawal cannot be requisite to a finding as to the existence of severe psychological dependence.

Although there are conflicts in the evidence as to the credibility of DEA’s experts and those of Rorer, the Government is by a clear preponderance of the evidence, has established that abuse of methaqualone and its salts constitutes an abuse of the drug with all the physical and psychological dependence. There is no indication in the testimony of DEA’s experts that severe physical dependence for the drug would not exist, hence the evidence would be limited to an insignificant number of instances if abuse of the drug were unchecked.

Consideration has been given to the contention of Rorer that Government Exhibit 20 demonstrates that methaqualone does not lead to severe psychological or physical dependence. This exhibit and Dr. Matthew’s testimony at Tr. 584–87 and 272–76 are cited for the proposition that methaqualone and its salts are not abusable in accordance with applicable statutes and regulations. The requirement that one of the drugs be habit-forming and, therefore, an abusable drug is met.


Based on the investigations of the Drug Enforcement Administration and on careful consideration of the Recommended Decision printed above, as well as the entire record hereof, and upon the scientific and medical evaluation and recommendation of the Secretary of Health, Education and Welfare, received pursuant to Section 201(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(b)), the Acting Administrator, Drug Enforcement Administration, finds that methaqualone and its salts:

(1) Have a high potential for abuse;
(2) Have a currently accepted medical use in the United States; and
(3) May, when abused, lead to severe physical and psychological dependence.

Therefore, under the authority vested in the Attorney General by Section 201(a) (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by § 101 of Title 28 of the Code of Federal Regulations (see 38 FR 13380, July 2, 1973), it is hereby ordered that:

1. Section 301.02 of Title 21 of the Code of Federal Regulations be amended by adding a new paragraph (b) (10) as follows:

§ 301.02 Definitions.

(b) . . .

(10) Each of the substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible in the specific chemical designation, listed in § 1308.12 (e) of this chapter.

2. Section 308.12 of Title 21 of the Code of Federal Regulations be amended by adding a new paragraph (e) to read as follows:

§ 308.12 Schedule II.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Methaqualone 2565 . . .

The requirements imposed upon the substances controlled by this order shall become effective as follows:

1. Registration. All persons who manufacture, distribute, and engage in research, imports or exports any of these substances or who proposes to engage in the manufacture, distribution, importation, exportation, or transportation of these substances, whether within or without the United States shall submit to the Drug Enforcement Administration any application to register, and forthwith shall comply with any of these requirements. Within three months from the date of the order, the Drug Enforcement Administration will entertain any justifiable requests for extensions of time.

2. Labelling and packaging. All labels and packages shall be so prepared and registered as to be clearly and accurately described and to indicate the name of each manufacturer, distributor, and importer of the substances. The record of label application and registration, any copies of the labels or packages of the substances, and any products containing the substances shall be kept in accordance with § 308.25 of this regulation.

3. Territory of these regulations. These regulations shall apply to the whole of the Territory of the United States and to all territories and possessions of the United States, to vessels in the seas and to aircraft in the air within the jurisdiction of the United States.

4. Violation of regulations. Whenever any person, firm, corporation, or association shall violate any of the provisions of this order, the Drug Enforcement Administrator may . . .

5. Inventory. Every registrant required to keep records who possesses any substance shall report the quantity and description of such substances to the Drug Enforcement Administrator on or before November 1, 1973.

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RULES AND REGULATIONS

Regulations shall maintain such records on these substances commencing on the date on which the inventory of these substances is taken.

7. Reports. All registrants required to file reports with the Drug Enforcement Administration pursuant to § 1304.37–1304.41 of Title 21 of the Code of Federal Regulations shall maintain the inventory taken under paragraph 5 above and on all subsequent transactions.

8. Order forms. Each distribution of any of these substances on or after November 1, 1973, shall be made by means of an order form pursuant to Part 1305 of Title 21 of the Code of Federal Regulations except as permitted in § 1306.03 of that title.

9. Importation and exportation. All importation and exportation of any of these substances on and after November 5, 1973, shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. Criminal liability. Pursuant to Title 21 of the Code of Federal Regulations § 1308.48, the Acting Administrator, Drug Enforcement Administration, hereby finds that:

1. Individuals are taking methaqualone in amounts sufficient to create a hazard to their own health or the safety of the community.

2. There exists significant diversion of methaqualone from legitimate channels; and

3. Persons are taking methaqualone on their own initiative rather than on the advice of a physician.

4. Methaqualone is being used in suicides and attempted suicides as well as causing other injuries resulting from unsupervised use.

Therefore, the Acting Administrator finds that conditions of Public Health and Safety necessitate that any activity with any of the substances, not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act, conducted after October 4, 1973, shall be unlawful, except that any person who is not now rendered harmless in law by the substances but who is entitled to registration under those Acts may continue to conduct normal business or professional practice with those substances between the date on which this order is published and the date on which he obtains or is denied registration.

11. Other. In all other respects, this order is effective on October 4, 1973.


JOHN R. BARTELS, Jr., Acting Administrator, Drug Enforcement Administration, U.S. Department of Justice.

[FR Doc. 73-21243 Filed 10-3-73; 8:45 am]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

Clariﬁcation of Recordkeeping Requirements for Certain Agricultural Labor

On June 27, 1973, there was published in the Federal Register (38 Fed. Reg. 18999) a notice of a proposed amendment clarifying the employment status of recordkeeping requirements for agricultural labor supplied by crew leaders where the farmer does not possess control, direct or supervise the work of, or to determine the pay rates or method of payment for, laborers to conform to the recent court decision in Hodgson v. Griffin & Brand (C.A. 10) 20 WH Cases 1107 and Hodgson v. Griffin & Brand (C.A. 5), 20 WH Cases 1051, which affirms the employer status of the farmer and crew leader. See also Mitchell v. Hartzke, 13 WH Cases 879 (C.A. 10). These decisions hold a farmer to be a joint employer where, in addition to the advantages of harvest accruing to him as owner of the crop from the work of the laborers, he has the power to direct, control or supervise this work, or to determine their pay rates or method of payment.

Interests are hereby invited to submit written data, views or comments on or before July 27, 1973. All relevant matter which has been submitted carefully and I have decided to adopt the proposed amendment as set forth below.


In § 516.33 paragraph (a) and the introductory text of (b) are revised and a new paragraph (g) is added as follows:

§ 516.33 Employees employed in agricultural labor.

(a) No records, except as required under paragraph (f) of this section, need be maintained by an employer who did not use more than 500 man-days of agricultural labor in any quarter of the preceding calendar year unless it can reasonably be anticipated that more than 500 man-days of agricultural labor (including agricultural workers supplied by crew leaders if the farmer has the power to direct, control or supervise the work, or to determine pay rates or method of payment) will be used in at least one calendar quarter of the current calendar year.

(b) If it can reasonably be anticipated that the employer will use more than 500 man-days of agricultural labor (including agricultural workers supplied by crew leaders if the farmer has the power to direct, control or supervise the work, or to determine pay rates or method of payment) counting more than zero employees, the employer must report the numbers of employees engaged in the harvest laborers as defined in section 13(a)(6) of the Act, the employer shall maintain and preserve payroll records containing the following information with respect to each worker:

(g) Where a farmer and a bona fide independent contractor or crew leader is joint employers of agricultural laborers, each employer is responsible for maintaining and preserving the records required by this section. Duplicate records of hours and earnings are not required. The requirements will be considered met if the employer who actually pays the employee maintains and preserves the records specified in § 516.33(c).

(52 Stat. 1060, as amended; 29 U.S.C. et seq.)

Effective date. This amendment shall be effective October 4, 1973.


WARREN D. LANDIS, Acting Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc. 73-21118 Filed 10-3-73; 8:45 a.m.]

PART 780—EXEMPTIONS APPLICABLE TO AGRICULTURAL COMMODITIES, PROCESSING OF AGRICULTURAL COMMODITIES, AND RELATED SUBJECTS UNDER THE FAIR LABOR STANDARDS ACT

Clariﬁcation of Employment Status of Certain Agricultural Labor

Pursuant to the Fair Labor Standards Act of 1938 (Pub. L. 75-716, 52 Stat. 1060, 29 U.S.C. 207 et seq. and 29 CFR 1949-53 Comp., p. 1004) and Secretary's Orders Nos. 13-71 and 15-71 (38 FR 8755-6), I hereby amend Part 780 of Title 29 of the Code of Federal Regulations, as amended to conform to the recently decided cases of Hodgson v. Okada (C.A. 10), 20 WH Cases 1107 and Hodgson v. Griffin & Brand (C.A. 5), 20 WH Cases 1051. See also Mitchell v. Hartzke, 234 F.2d 183, 12 WH Cases 877 (C.A. 10). These decisions hold a farmer to be a joint employer where, in addition to the advantages of harvest accruing to him as owner of the crop from the work of the laborers, he has the power to direct, control or supervise their work, or to determine their pay rates or method of payment.

Notice of proposed rule making and opportunity for public hearing are not required. This amendment merely represents the clarification of existing exemption rules which are deemed advisable to reflect the holding in these court decisions. Therefore notice and public procedure thereon are contrary to the public interest.

This amendment shall be effective October 4, 1973.

1. Paragraph (c) of § 780.305 is added to read as follows:

§ 780.305 500 man-day provision.

(c) A farmer whose crops are harvested by an independent contractor is considered to be a joint employer with the contractor who supplies the harvest hands if the farmer has the power to direct, control or supervise the work, or to determine the pay rates or method of payment for the harvest hands. (See § 780.331.) Each employer must include the contractor's employees in his man-day count in determining whether his own man-day test is met. Each employer