(ii) *Indications for use.* For treatment of bacterial enteritis caused by *Salmonella typhimurium* and *Escherichia coli* (colibacillosis) and bacterial pneumonia (shipping fever complex, pasteurellosis) caused by *Pasteurella multocida.*

* * * * *

Effective date. January 9, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: December 31, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-558 Filed 1-8-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-103S]

Educational/Scientific Diving

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final Guidelines; Supplemental Statement of Reasons.

SUMMARY: The purpose of this notice is to establish the final guidelines that OSHA will use, in conjunction with the exemption criteria contained in the Final Rule (47 FR 53357), to determine whether a scientific diving program can avail itself of the exemption from the standard for commercial diving operations, 29 CFR Part 1910, Subpart T. The absence of any factor specified in these guidelines or the Final Rule renders a diving program ineligible for the exemption.

EFFECTIVE DATE: These guidelines become effective January 9, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 1982, OSHA exempted scientific diving from coverage under 29 CFR Part 1910, Subpart T, Commercial Diving Operations, provided that the diving meets the Agency's definition of scientific diving *and* is under the direction and control of a diving program utilizing a safety manual and a diving control board meeting certain specified criteria (47 FR 53357; § 1910.401(a)(2)(iv)).

Based on the rulemaking proceedings on scientific diving, OSHA concluded that significant differences exist between scientific and commercial diving; that the scientific diving community has been successfully self-regulated for many years based on standards developed by the Scripps Institution of Oceanography; that this successful self-regulation is evidenced by its exemplary safety record; and that an exemption from Subpart T would allow the scientific diving community to perform significant underwater scientific activities while maintaining the safety and health of scientific divers.

In its Final Rule, therefore, OSHA established a narrow exemption from the requirements of Subpart T for scientific diving programs that meet specified conditions.

Under section 6(f) of the Occupational Safety and Health Act of 1970, the United Brotherhood of Carpenters and Joiners (UBCJ) filed a petition for judicial review of the Final Rule with the United States Court of Appeals for the District of Columbia Circuit, challenging the Final Rule's exemption for scientific diving. The Secretary opposed the UBCJ's petition on both procedural and substantive grounds. The Secretary asserted, among other arguments, that the Union lacks standing to challenge the exemption, because the divers it represents are not subject to the exemption.

On April 4, 1984, the Court of Appeals issued a memorandum and order on the question of the Union's standing to maintain its challenge. The Court ordered the Secretary to give the UBCJ "full opportunity, through affidavits or testimony, to make clear the nature of its membership and the diving work that membership performs." The order provided that any evidence submitted by the Union would become a part of the record.

The Court also ordered the Secretary to "authoritatively state guidelines that would indicate how the 'scientific' and 'commercial' classifications will be applied to arguably ambiguous cases." The guidelines were also to become part of the record.

In compliance with the Court's order, OSHA published a notice on July 18, 1984 (49 FR 29105), which reopened the record and gave the UBCJ full opportunity to submit affidavits regarding its membership and the diving work they perform. The notice also explained the interpretive guidelines that OSHA will use in determining which enterprises may avail themselves of the exemption for scientific diving.

Because the Court's order entailed an enlargement of the public rulemaking record, the Agency considered it appropriate to allow the general public, as well as the Union, to comment on the specific aspects of the Final Rule addressed in the notice.

The notice contained guidelines intended to further clarify what scientific programs can be exempt from the commercial diving standard. The notice (49 FR 29105) stated that OSHA will scrutinize, *in conjunction with the exemption criteria as specified in the Final Rule,* seemingly close cases using the following interpretive guidelines, *all* of which must be met to qualify as scientific diving:

1. The Diving Control Board consists of a majority of active scientific divers and has autonomous and absolute authority over the scientific diving program's operations.

2. The purpose of the project using scientific diving is the advancement of science; therefore, information and data resulting from the project are non-proprietary.

3. The tasks of a scientific diver are those of and observer and data gatherer Construction and trouble-shooting tasks traditionally associated with commercial diving are not included within scientific diving.

4. Scientific divers, based on the nature of their activities, must use scientific experties in studying the underwater environment and, therefore, are scientists or scientists in training.

Summary and Explanation of Final Guidelines

OSHA received more than 40 affidavits; and comments in response to the notice. The UBCJ submitted a comment concerning the guidelines and six affidavits from its membership regarding the issue of standing. Because the final guidelines indicate how OSHA will apply "the 'scientific' and 'commercial' classifications to arguably ambiguous cases," OSHA will here discuss only the UBCJ's comments on the guidelines. OSHA will not address the Union's comments regarding its standing to challenge the Final Rule. The Agency's view on standing, as well as the Union's, are expected to be put before the Court for its determination in the near future.

The Agency also received numerous comments and affidavits from other interested members of the public. These, too, will be addressed to the extent that they concern OSHA's guidelines for distinguishing exempt from non-exempt diving.

The UBCJ and certain other commenters (Ex. 31: 30, 31) argued that OSHA was misguided in distinguishing between scientific and commercial diving because all divers are exposed to the same "inherently hostile environment" (Ex. 31: 30). It is important to note that the purpose of the guidelines and this limited reopening of the record is to establish the factors OSHA will use to *identify* those diving programs which may avail themselves of the exemption—not to reconsider the merits of the exemption itself.

Nevertheless, OSHA reiterates its conclusion that the narrow exemption created by the Final Rule is appropriate. OSHA has received numerous comments from scientific divers throughout the rulemaking and court proceedings who support this system of effective self-regulation (e.g., Ex. 5: 7; 21; 58; 62; 103; 152; Ex. 31: 1; 3; 7; 9; 10; 15; 29). OSHA agrees with members of the scientific diving community that its system of self-regulation effectively protects the scientific diver. The effectiveness of the program is demonstrated through the scientific diving community's exemplary safety record (47 FR 53361).

Further, in order to assure that programs are in conformance with the Scripps concepts and that they continue to adhere to the effective system of self-regulation, OSHA decided not to issue a blanket exemption for all scientific diving but, instead, placed conditions on the exemption so that scientific divers would continue to experience the high level of safety and health they had experienced in the past. The scientific diving community agreed that conditions placed on the exemption would be beneficial to the scientific diving community in preserving the integrity of its programs (Tr. 46–48, 182, 208, 215–216, 236, 326, 353–353A, 444, 453, 470–472, 519–520, 570, Ex. 25).

One community (Ex. 5: 153) from the scientific diving community noted:

> There is no shred of evidence to indicate that the SDC [scientific diving community] has been irresponsible in any way toward the health and safety of its members. Indeed the fact is that the underwater scientists themselves write their own manuals for diving safety using the Scripps standard of practice as a model. They adapt it for their specific programs and update it as experience is gained and technology changes. These manuals for diving safety are the best they can be because the people who live by them are also the curators. The system of peer review, diving scientists reviewing, constructively criticizing and approving project diving protocols is infinitely more sound than regulation without representation. The essence of this system is that the local rules can be modified, changed and molded on a real time basis, not by persons who are unfamiliar and perhaps even hostile to the requirements of the underwater research environment, but by the underwater scientists themselves who are attuned to the waves, the water and the ever changing nature of this enterprise.

Finally, OSHA has no reason to believe that the experience of the scientific diving community or the safety and health of the scientific diver will not continue. As indicated in the Final Rule by a commenter from the scientific diving community (Ex. 5: 142):

> Exemption from OSHA does not mean that the Community will be without safety standards, for the scientific community will continue a long established practice which has resulted in a nearly perfect safety record.

Guidelines

Based on the affidavits and comments and the other data and information in the rulemaking record, OSHA concludes that the guidelines discussed in the July 18 notice (49 FR 29105) and again in this notice, in conjunction with the exemption criteria in the Final Rule, will serve to clearly distinguish between the scientific diving community which should be exempt because of its effective system of self-regulation and all other diving and diving programs. The American Academy of Underwater Sciences (Ex 31: 26), representing the scientific diving community, has stated its belief that the guidelines are well stated and acceptable to the scientific diving community.

OSHA wants to emphasize that a failure of a program to meet any part of the exemption criteria, including the guidelines, will prevent the program from availing itself of the exemption.

It should be noted that the examples contained in the discussions of individual guidelines below are for the purpose of illustrating the application of a single guideline. Programs must meet all of the criteria in the Final Rule as interpreted by the final guidelines to avail themselves of the exemption. While any *single* guideline may be subject to criticism as potentially underinclusive, OSHA believes that an employer's duty to comply with *all* criteria in the Final Rule, as interpreted by *all* the guidelines, assures that the exemption from Subpart T is not only clear to the diving community, but is also narrowly restricted to the group whose exemplary safety record justified the exemption.

1. Organizational Structure

The first guideline concerns organizational structure and states that the Diving Control Board must consist of a majority of active scientific divers and have autonomous and absolute authority over the scientific diving program's operations.

OSHA believes that the organizational structure of the scientific diving community's consensual standard program is not only vital to the integrity of scientific diving programs, but effectively serves to segregate scientific diving from commercial diving. The Diving Control Board required of scientific diving programs contains several elements that distinguish between commercial diving and the exempt scientific diving programs. These distinctive elements include absolute authority over diving operations, the autonomy inherent in the Board's decision-making powers and responsibilities, and peer review.

In order to assure that the Diving Control Board has control of the diving program and absolute authority over diving, as comments asserted was the practice in the scientific diving community (e.g., Ex. 5: 22; 27; 35), OSHA requires that the Board have the authority to approve and monitor diving projects; review and revise the diving safety manual; assure compliance with the manual; certify the depths to which a diver has been trained; take disciplinary action for unsafe practices; and assure adherence to the buddy system (in which a diver is accompanied by and is in continuous contact with another diver in the water) for SCUBA diving (47 FR 53365; § 1910.401(a)(2)(iv)(B)). OSHA's intent was for the Diving Control Board, primarily consisting of the divers themselves, to regulate the diving activities in a manner consistent with that described by the scientific diving community throughout the rulemaking (e.g., Ex. 5: 29A1; 49; 53; Ex. 31: 9; 10; 15). Therefore, OSHA will verify that such Boards have this autonomous and absolute authority over scientific diving operations.

The issue of peer review was discussed thoroughly during the rulemaking and was supported by the majority of commenters. OSHA noted at 47 FR 53360:

> The majority of commenters (e.g., Ex. 5: 9; 28; 60; 102; 137; 162) as well as witnesses at the hearing (Tr. 33, 163, 321A, 531) favored this system of self-regulation because it is formulated, monitored, and enforced by the working diver.

OSHA also believes this system of peer review has successfully regulated scientific diving programs and, therefore, OSHA mandates that the majority of members of the Diving Control Board be active divers (§ 1910.401(a)(2)(iv)(B)). OSHA's intent

with respect to this "peer review" was that the active divers required to make up the Board would be *scientists* who actively dive, since at issue was the control of a scientific program. Thus, OSHA will interpret the membership requirement as it was intended in the Final Rule. The "majority of active divers" on the Diving Control Board must also be scientists.

OSHA realizes that some commercial diving companies may have an entity similar to a Diving Control Board, such as a diving safety committee. However, OSHA does not believe that such committees have the same scientific diver representation on the committee, nor the autonomy and authority over diving operations which characterize a scientific diving program's Diving Control Board.

The UBCJ has criticized several aspects of OSHA's organizational criteria for distinguishing between scientific and commercial diving. The Union asserts that OSHA has changed positions by requiring the Diving Control Board to contain a majority of active "scientific" divers; that this change may exclude more experienced persons in other disciplines from the Board; that such a requirement is unnecessary because the Board passes on health and safety aspects, not the science aspects of a project; and that the criteria are defective because they lack a provision ensuring the right of divers to refuse to dive.

OSHA has not changed its position concerning the membership of the Diving Control Board. Commenters discussed the peer nature of the Diving Control Board numerous times throughout the rulemaking and court proceedings (e.g., Ex. 5: 34; 41; 42; 69; 91, Tr. 33, 174, Ex. 31: 1; 4; 9; 27). For example, one commenter (Ex. 5: 35) remarked:

> All scientific diving activities, including the certification of divers in our program, are regulated by our Diving Control Board which uses a peer review system.

A witness at the hearing (Tr. 48) stated that "All diving operations shall undergo peer review by committee, which shall include diving scientists, the divers themselves." Another commenter (Ex. 5: 42) remarked:

> I feel that it is important to stress the fact that our diving control board is made up of divers themselves, who have effectively self-regulated our diving program for the past 15 years.

The UBCJ's assertion that OSHA has changed its position by requiring a majority of the Diving Control Board to be scientists is based on a misreading of the preamble to the Final Rule. The UBCJ states that in the Final Rule "OSHA intentionally avoided requirements focusing on the status of personnel as scientists. . . . in favor of an approach that would focus on the types of tasks performed and the objectives to be obtained." (Ex. 31: 22, p 6). Contrary to the UBCJ's assertions, OSHA never deviated from the requirement that the Board have a majority of scientists. The passages referred to by the UBCJ reflect OSHA's rejection of dependence upon fixed credentials (such as the number of published papers) to determine *who* is a scientist, not a rejection of the requirement that scientific divers *be scientists*.

The UBCJ's second objection, that requiring a majority of scientists on the Diving Control Board may exclude more experienced persons in other disciplines, is also unpersuasive. OSHA's requirement does not, by its terms, exclude participation of representatives from other disciplines. On the contrary, OSHA is aware that individuals from other disciplines are members of Diving Control Boards and that such individuals have not been excluded from participating in the functions of the Diving Control Board (e.g., Ex. 5: 11; 143; 163, Tr. 174).

The Union also asserts that scientists need not comprise a majority of the Board because it evaluates health and safety, not science (Ex. 31: 22 pp. 7–8). This assertion ignores the inseparable blending of the scientific purpose of a dive and the way in which the dive is carried out. The "science aspects" of the project directly impinge upon the safety and health of divers just as the "construction aspects" of commercial dives do.

The UBCJ also indicates that the Secretary's criteria are deficient because they do not include a provision ensuring that divers not be forced to dive against their will (Ex. 31: 22, pp. 8–9). The refusal to dive is an accepted factor in scientific diving programs and OSHA concludes that there is no reason why the scientific diving community would eliminate it even though it is not specified in the criteria. Representatives of the scientific diving community indicated the stability of such requirements in their comments to the Agency (e.g., Ex. 5: 111, 153). One representative (Ex. 5: 142) remarked:

> Exemption from OSHA does not mean that the community will be without safety standards *for the scientific community will continue a long established practice which has resulted in a nearly perfect safety record.* (Emphasis added.)

While OSHA considered the use of right to refuse in the criteria at one time, several commenters during the rulemaking, and in response to the guidelines, indicated that such refusal was not a significant factor in distinguishing scientific from commercial diving (e.g., Ex. 31: 12; 13). For example, one commenter (Ex. 29) stated that:

> . . . no legitimate employer forces or requires a diver to compromise safety in any way or would threaten to discharge a diver who opts not to dive on a particular occasion. It is plainly offensive to the union member . . . to suggest that those men are so weak that they would accept "bends" or be pressured to work under unsafe conditions—it is also illegal for an employer to act in this fashion.

Another commenter, the UBCJ (Ex. 26, p. 10), stated:

> . . . the institutional proponents of the broad exemption also sought to distinguish scientific from commercial diving on the basis that scientific divers have the right to refuse unsafe work without fear of discrimination. This purported distinction is a false one, and is unjustified on the record. As indicated in the hearings, many of our Union contracts covering commercial operations contain such a provision. Moreover, the Supreme Court's decision in *Whirlpool*, as well as NLRB and court decisions under the NLRA, recognize employees' qualified right to refuse hazardous work. And under Section 11(c) of the Act, OSHA protects workers from discrimination for asserting their rights regarding health and safety.

Indeed, in its comments on the guidelines published on July 18, 1984, the UBCJ itself conceded that the right to refuse to dive does not categorically distinguish scientific diving from commercial diving (Ex. 31: 22, p. 8–9).

Thus OSHA did not adopt the right to refuse as a necessary program element, since it is inherent in scientific diving programs and there was widespread agreement that it was unnecessary to specifically include it in the guidelines.

2. Restricted Purpose

The second guideline concerns the restricted purpose of the project and states that the purpose of the project using scientific diving is the advancement of science; therefore, information and data resulting from the project are non-proprietary.

In part, the definition of scientific diving is "diving performed solely as a necessary part of a scientific, research, or educational activity" (47 FR 53365; § 1910.402). The National Oceanic and Atmospheric Administration Diving Manual has noted that "marine research using diving as a tool has been important in understanding the ocean, its organisms, and its dynamic processes." Such diving includes the study of fish behavior, ecological

surveys and benthic surveys (the aggregate of organisms living on or at the bottom of a body of water).

Scientific diving is an adjunct used in the advancement of underwater science, as was indicated in the proceedings (e.g., Ex. 4: 2, Ex. 5: 19; 24; 153, Tr. 49, 601, 602, Ex. 31: 7; 9; 16). For example, representatives from the scientific diving community noted that "Our objective is to promote the advancement of science and the use of underwater methods" (Tr. 177), that "Research and the furtherance of scientific knowledge are their (the divers) primary goals" (Ex. 31: 16), that results are "shared worldwide" (Ex. 31: 7), and further that coverage of the scientific diving community by Subpart T, Commercial Diving Operations, might cause "irreparable damage to the underwater scientific effort of the United States" (Ex. 5: 153).

Because the exemplary safety record which led OSHA to promulgate the narrow exemption to Subpart T was created by diving with the restricted purpose of advancing science, OSHA has limited the scope of the exemption to diving intended to advance science. OSHA believes that the advancement of science cannot occur unless such studies are made available to contribute to and enhance scientific knowledge. Therefore, OSHA's intent in promulgating the amendment was to restrict the exemption to scientific research dives that result in non-proprietary information, data, knowledge, or other work product.

The UBCJ indicated that OSHA's guideline concerning the non-proprietary nature of the results of scientific diving may need further clarification, apparently because the limitation to non-proprietary results may be perceived as applying only to scientific, not research or educational, activities (Ex. 31: 22, p 10). If such clarification is indeed needed, it is hereby supplied. The requirement that information be non-proprietary applies to scientific, research, and educational activities engaged in by scientific divers.

The UBCJ also indicated that further clarification is needed to indicate whether projects that do not result in published work are proprietary or non-proprietary (Ex. 31: 22, p 9). OSHA regards the distinction as a clear one: Material available to the public for review is non-proprietary, whether or not it is published; material not available for review is proprietary.

The UBCJ also took exception to the use of environmental impact studies as an example of scientific diving. However, OSHA believes that there are circumstances when it may be necessary to perform scientific diving as a part of an environmental impact study. In certain instances, only underwater scientists may be able to evaluate potential impacts on ecological systems. If the results of such scientific evaluation are made available to the public, and if the numerous other criteria for exemption are met, the scientists conducting that activity would be relieved from compliance with Subpart T.

3. Tasks Performed

The third guideline concerns the tasks performed and states that the tasks of a scientific diver must be those of an observer and data gatherer. Construction and trouble-shooting tasks traditionally associated with commercial diving are not included within scientific diving.

The scientific diving definition in the standard further states that such diving must be done by employees whose sole purpose for diving is to perform scientific research tasks. Also contained in the definition is a list of those tasks that are traditionally considered commercial, with emphasis on construction and the use of construction tools. As OSHA discussed in the final Rule (47 FR 53357), a commercial diver is typically an underwater construction worker, builder and trouble shooter; a scientific diver is an observer of natural phenomena or responses of natural systems, and a gather of data for scientific analysis. The tasks performed by the scientific diver are usually light and short in duration; if any handtools are used, they are simple ones. One commenter (Ex. 5: 122) noted:

> The common tools of the scientific diver include a small hammer (for chipping off a coral sample), collecting jars, special hand-held measuring devices, plastic core tubes, a hand net, a suction fish collector, a camera, a slate/pencil, and so on. With very few isolated exceptions does a scientific diver encounter a situation which involves working with heavy equipment underwater, using power tools, handling explosives, or using welding or burning equipment. In order to be involved in such heavy work using specialized equipment (common in commercial diving) the diver would have to receive "approved" training and the procedure and personnel involved would have to be "approved" by the diving safety control board. In my opinion, as a diving safety coordinator, *I would specify contracting such tasks to qualified commercial divers.* (Emphasis added.) I feel that most university diving safety coordinators and diving safety control boards would do likewise.

Another commenter (Ex. 31: 14) remarked:

> This institution would not consider having scientific divers perform commercial work because they are not trained for it, insured for it, and the University should not compete with the private sector by using students or staff for such activities. In point of fact, any commercial type diving required by this institution is put out for bid by the State of Texas and it is accomplished by commercial diving contractors.

As indicated in the previous notice (49 FR 29105), an example of task distinction might involve a scientific study of kelp. The construction of the kelp bed used in the project is not scientific diving since construction activities are commercial diving tasks. The consequent studies made of the kelp would be scientific diving tasks.

OSHA will carefully evaluate the tasks of those entities claiming to be performing scientific diving to assure that commercial diving type tasks are not being performed.

OSHA believes that task distinctions do exist between commercial diving and scientific diving and OSHA does not acknowledge, as the UBCJ asserts, that a considerable range of commercial tasks is typical of scientific tasks.

In its comment (Ex. 31: 22), the UBCJ lists a series of examples of diving tasks (such as the lowering of Sea Lab) that the scientific diving community allegedly believed to be scientific diving tasks. OSHA would like to note that the main purpose of the rulemaking was to discuss such issues as what constitutes scientific diving tasks. Based on a thorough discussion of these issues, OSHA determined that the lowering of a large object (such as Sea Lab), even though a part of a scientific project, was *not* scientific diving. The special skills of an underwater scientist, including observation and data collection skills, were obviously not contributions to the placement of a large object underwater. In fact, OSHA was convinced that this type of task is a typical commercial task, requiring the skills of commercial divers in accomplishing the placement of such an object.

OSHA avoided the possibility of the exemption applying to scientific divers who undertake such tasks while participating in a scientific research project by focusing the definition on the sole purpose of the dive (scientific research tasks), eliminating dives with mixed purposes, and further indicating typical examples of what OSHA considered to be commercial tasks. The scientific diving community has supported this limited definition (Amicus Brief, *UBCJ* v. *OSHA*, No. 82–2509 (D.C. Cir.)).

4. Special Qualifications

The fourth guideline concerns special qualifications and states that scientific divers, based on the nature of their activities, must use scientific expertise in studying the underwater environment and, therefore, must be scientists or scientists in training.

As noted above, a scientific diver is an observer and data gatherer involved in studying the underwater environment, its organisms and its dynamic processes in order to promote underwater science. OSHA believes, based on the nature of these activities, that these divers must be able to use scientific expertise in studying and analyzing the underwater environment. Consequently, OSHA will require these divers to be scientists or scientists in training. This guideline is amply supported by descriptions in the rulemaking record and court proceedings of the personnel who participate in scientific dives (e.g., Ex. 4: 2, Ex. 5: 34; 72; 153, Exs. 20, 21, 25, Ex. 31: 3; 4; 7; 15; 19).

For example, a project to map segments of the ocean floor might hire commercial divers to undertake certain mapping tasks. These commercial divers are neither scientists nor scientists in training as prescribed by this guideline and, therefore, would not be eligible for exemption. If, however, scientific expertise were needed to effectively accomplish tasks associated with the mapping (e.g., specialized geological knowledge), and a geologist trained as a diver were hired to perform the special geological tasks associated with the mapping, then such diving tasks would meet this *particular* criterion. As stated previously, however, all program criteria and guidelines must be met in order for this diving scenario to qualify for the exemption.

The UBCJ asserts that OSHA has changed its position by specifying that only scientists or scientists in training do scientific diving within the meaning of the exemption. The Union further asserts that OSHA rejected personnel status requirements in promulgating the Final Rule (Ex. 31: 22, p 16). As explained above, this assertion misstates OSHA's actions. In promulgating the exemption, OSHA rejected credentialism to determine who is a scientist; the Agency did not reject the limitation that exempted individuals must be scientists. Such a limitation reflects the scientific diving community's underwater activities. In addition, it prevents obvious commercial diving from being construed as scientific diving.

OSHA, therefore, has not changed its position in requiring scientific divers to be scientists; the nature of their tasks makes this a natural extension to the definition, and, as indicated, is amply supported by the record.

Appendix B

OSHA believes that the final guidelines discussed in this notice should be readily accessible to interested persons. OSHA has therefore determined that the guidelines should be included as an appendix to the standard for commercial diving operations. Therefore, OSHA is adding a new appendix, Appendix B, to 29 CFR Part 1910, Subpart T, Commercial Diving Operations.

Regulatory Assessment

For the reasons stated in the preamble to the Final Rule exempting scientific diving from the commercial diving standard (47 FR 53364), OSHA concludes that this action does not require a regulatory impact analysis pursuant to E.O. 12291 (46 FR 13193) or a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 29 CFR Part 1910

Occupational safety and health, Safety.

Authority

This document was prepared under the direction of Robert A. Rowland, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

PART 1910—[AMENDED]

Accordingly, pursuant to sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), section 41 of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1444 as amended; 33 U.S.C. 941), and Secretary of Labor's Order No. 9–83 (48 FR 35736), Part 1910 of Title 29 of the Code of Federal Regulations, is amended by adding a new Appendix B at the end of Subpart T, to read as follows:

Appendix B—Guidelines for Scientific Diving

This appendix contains guidelines that will be used in conjunction with § 1910.401(a)(2)(iv) to determine those scientific diving programs which are exempt from the requirements for commercial diving. The guidelines are as follows:

1. The Diving Control Board consists of a majority of active scientific divers and has autonomous and absolute authority over the scientific diving program's operations.

2. The purpose of the project using scientific diving is the advancement of science; therefore, information and data resulting from the project are non-proprietary.

3. The tasks of a scientific diver are those of an observer and data gatherer. Construction and trouble-shooting tasks traditionally associated with commercial diving are not included within scientific diving.

4. Scientific divers, based on the nature of their activities, must use scientific expertise in studying the underwater environment and, therefore, are scientists or scientists in training.

Signed at Washington, D.C. this 20th day of December 1984.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85–2 Filed 1–8–85; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3098/R725; PH–FRL 2749–8]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Acephate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises the established tolerance for residues of the insecticide acephate and its cholinesterase-inhibiting metabolite in or on bell peppers to include all types of peppers. This regulation was requested by the Chevron Chemical Co.

EFFECTIVE DATE: Effective on January 9, 1985.

ADDRESS: Written objections may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: William Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 5, 1984 (49 FR 47550), which announced that the Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804, had submitted a pesticide petition (4F3098) to EPA proposing that 40 CFR 180.108 be amended by changing the established tolerance for the combined residues of