(3) The attending veterinarian must conduct a complete physical examination of each dolphin at least once every 6 months. The examination must include a profile of the dolphin, including the dolphin's identification (name and/or number, sex, and age), weight,¹¹ length, axillary girth, appetite, and behavior. The attending veterinarian must also conduct a general examination to evaluate body condition, skin, eyes, mouth, blow hole and cardiorespiratory system, genitalia, and feces (gastroin estinal status). The examination must also include a complete blood count and serum chemistry analysis. Fecal and blow hole smears must be obtained for cytology and parasite evaluation.

(4) The attending veterinarian must record the nutritional and reproductive status of each dolphin (whether in active breeding program, pregnant, or nursing).

(5) The attending veterinarian must examine water quality records and provide a written assessment, to stay at the SWTD site for at least 3 years, of the overall water quality during the preceding month.

(6) In the event that a dolphin dies, complete necropsy results, including all appropriate histopathology, must be recorded in the dolphin's individual file and be made available to APHIS officials during facility inspections, or as requested by APHIS. The necropsy must be performed within 48 hours of the dolphin's death, by a veterinarian experienced in marine mammal necropsies. If the necropsy is not be performed within 3 hours of the discovery of the dolphin's death, the dolphin must be refrigerated until necropsy. Written results of the necropsy must be available in the dolphin's individual file within 7 days after death for gross pathology and within 45 days after death for histopathology.

Done in Washington, DC, this 18th day of January 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Ostensible Subcontractor Rule and the Affiliation of Business Concerns Under Joint Venture Arrangements

AGENCY: Small Business Administration. ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing a revision to its "ostensible subcontractor" rule as set forth in its affiliation regulation to permit small businesses to enter into subcontracts with certain public utilities for the lease and use of distribution facilities (telecommunication circuits, petroleum and natural gas pipelines, and electric transmission lines) without being considered affiliated with the public utility where the small business prime contractor adds meaningful value to the contract. This revision is being considered to take into account new business arrangements which have emerged as a result of deregulation of several public utility industries.

DATES: Comments must be submitted on or before March 24, 1995.

ADDRESSES: Send comments to: Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6880, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT:

Gary M. Jackson, Assistant Administrator for Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: The SBA is proposing to revise its "ostensible subcontractor" rule as set forth in 13 Code of Federal Regulations (CFR) part 121.401(1)(4) with regard to affiliation arising from certain continuing arrangements. Under this regulation, affiliation is generally found to exist when one firm acting as a prime contractor enters into a subcontracting arrangement with another firm who, in turn, performs the "primary or vital requirements" of a contract. Under this arrangement, if the prime contractor is reliant upon the subcontractor to perform the contract to the extent that the subcontractor assumes a controlling role on the contract, then the relationship will be regarded by SBA as a joint venture with the two firms deemed affiliated under the "ostensible subcontractor" rule. The size of a joint venture is based on the combined revenues or number of employees. depending on the applicable size standard, of both firms. For a joint venture to be considered a small

business, its size cannot exceed the applicable size standard.

The SBA is considering a modification to this "ostensible subcontractor" rule by expressly excluding from its coverage subcontracting agreements for the lease and use of distribution facilities of public utilities for telecommunication circuits, petroleum and natural gas pipelines, and electrical transmission lines where the prime contractor lessee contributes meaningful value to the contract. This modification would allow small businesses to enter into certain arrangements with other businesses in the provision of public utility services to the government without being considered joint venturers and affiliates. The SBA is concerned, however, that such a modification could have the unintended effect of allowing a small business to act as a mere broker or intermediary on the behalf of a large business. This possible consequence, addressed in greater detail below, is an issue that the SBA will be examining carefully before making a final decision on this proposal. It should be noted that this proposed rule would specifically exempt a finding of affiliation based solely on subcontracting agreements between firms that lease and use the public utility's distribution facilities and the public utility who owns and maintains the facilities, but other relationships between the firms could still bring about a finding of affiliation.

The impact of several recent size appeal decisions issued by SBA's Office of Hearings and Appeals has led several small businesses to request that SBA reassess its regulations on joint ventures as applied to firms that lease telecommunications circuits. These decisions found resellers of long distance telecommunications services affiliated with the owner of the telephone circuits, on the basis that the provider of the lines would perform the 'primary and vital requirements" on a government contract by providing, maintaining and repairing telecommunications circuits, and that, therefore, the relationship between the reseller and long distance provider should be regarded as a joint venture arrangement and the firms should be considered affiliated under the "ostensible subcontractor" rule. As a result of the existing regulation and these decisions, federal contracting opportunities have been placed in jeopardy for both small businesses and small disadvantaged businesses operating through lease arrangements for telecommunication lines and circuits. SBA believes that its size regulations should be re-evaluated in

¹¹Weight may be measured either by scale or calculated using the following formulae:

Females: Natural log of body mass = -8.44+1.34 (natural log of girth) +1.28 (natural log of standard length)

Males: Natural log of body mass=-10.3+1.62(natural log of girth)+1.38 (natural log of standard length)