

Because the determination that a bidder or offeror is capable of performing a contract is largely committed to the contracting officer's discretion, GAO will generally not consider a protest challenging such a determination. The exceptions are protests that allege that definitive responsibility criteria in the solicitation were not met and those that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation.

(d) *Procurement integrity.* For any Federal procurement, GAO will not review an alleged violation of subsections (a), (b), (c), or (d) of sec. 27 of the Office of Federal Procurement Policy Act, 41 U.S.C. 423, as amended by sec. 4304 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, 110 Stat. 186, February 10, 1996, where the protester failed to report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation.

(i) *Suspensions and debarments.* Challenges to the suspension or debarment of contractors will not be reviewed by GAO. Such matters are for review by the contracting agency in accordance with the applicable provisions of the Federal Acquisition Regulation.

(j) *Competitive range.* GAO will not consider protests asserting that the protester's proposal should not have been included or kept in the competitive range.

7. Amend § 21.7 by revising paragraphs (c) and (g) to read as follows:

**§ 21.7 Hearings.**

(c) Hearings generally will be conducted as soon as practicable after receipt by the parties of the agency report and relevant documents. Although hearings ordinarily will be conducted at GAO in Washington, DC, hearings may, at the discretion of GAO, be conducted at other locations, or by telephone or other electronic means.

(g) If a hearing is held, each party shall file comments with GAO within 5 days after the hearing was held or as specified by GAO. If the protester has not filed comments by the due date, GAO shall dismiss the protest.

8. Amend § 21.8 by revising paragraph (e) to read as follows:

**§ 21.8 Remedies.**

(e) If the contracting agency decides to take corrective action in response to a protest, GAO may recommend that the agency pay the protester the reasonable costs of filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees. The protester shall file any request that GAO recommend that costs be paid within 15 days of the date on which the protester learned (or should have learned, if that is earlier) that GAO had closed the protest based on the agency's decision to take corrective action. The protester shall furnish a copy of its request to the contracting agency, which may file a response within 15 days after receipt of the request, with a copy furnished to the protester.

9. Amend § 21.10 by removing paragraph (d)(3), redesignating (d)(4) as (d)(3), and by revising paragraph (e) to read as follows:

**§ 21.10 Express options, flexible alternative procedures, accelerated schedules, summary decisions, and status and other conferences.**

(e) GAO, on its own initiative or upon request by the parties, may use flexible alternative procedures to promptly and fairly resolve a protest, including alternative dispute resolution, establishing an accelerated schedule, and/or issuing a summary decision.

10. Amend § 21.11 by revising paragraph (b) to read as follows:

**§ 21.11 Effect of judicial proceedings.**

(b) GAO will dismiss any case where the matter involved is the subject of litigation before, or has been decided on the merits by, a court of competent jurisdiction. GAO may, at the request of a court, issue an advisory opinion on a bid protest issue that is before the court. In these cases, unless a different schedule is established, the times provided in this part for filing the agency report (§ 21.3(c)), filing comments on the report (§ 21.3(i)), holding a hearing and filing comments (§ 21.7), and issuing a decision (§ 21.9) shall apply.

11. Amend § 21.12 by revising paragraph (b) to read as follows:

**§ 21.12 Distribution of decisions.**

(b) Decisions may be distributed to the parties, and are available from GAO, by electronic means.

**Anthony H. Gamboa,**

*General Counsel.*

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 77**

[Docket No. 02-021-3]

**Tuberculosis in Cattle and Bison; State and Zone Designations; Texas: Delay of Compliance Date**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim Rule; delay of compliance date.

**SUMMARY:** In an interim rule amending the bovine tuberculosis regulations to classify the State of Texas as modified accredited advanced, we delayed the date for compliance with certain identification and certification requirements in those regulations until January 1, 2003. In this action, we are further delaying the date for compliance until September 30, 2003. This action will allow affected parties additional time to make necessary preparations to comply with certain requirements.

**DATES:** The date for complying with certain requirements of 9 CFR 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from the State of Texas (see "Tuberculosis in Cattle and Bison; State and Zone Designations; Texas," published in the **Federal Register** on June 6, 2002 [67 FR 38841-38844, Docket No. 02-021-1]) is September 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-7716.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 6, 2002, we published an interim rule in the **Federal Register** (67 FR 38841-38844, Docket No. 02-021-1) amending the bovine tuberculosis regulations in 9 CFR part 77 regarding State and zone classifications by removing the split-State status of Texas and classifying the entire State as modified accredited advanced. Under

the regulations in § 77.10 for certain cattle or bison originating in a modified accredited advanced State or zone, cattle or bison that are not known to be infected with or exposed to tuberculosis must meet certain identification, certification, and testing requirements prior to being moved interstate.

In the interim rule, we delayed, until January 1, 2003, the date for compliance with the following interstate movement requirements for the State of Texas, except for the former modified accredited advanced zone in El Paso and Hudspeth Counties, TX:

- The identification of sexually intact heifers moving to approved feedlots and steers and spayed heifers (§ 77.10(b));
- The identification requirements for sexually intact heifers moving to feedlots that are not approved feedlots (§ 77.10(d)); and
- Because identification is required for certification, the certification requirements for sexually intact heifers moving to unapproved feedlots (§ 77.10(d)).

We delayed compliance of these requirements for two reasons. First, the size of the cattle industry in Texas necessitated additional time to implement the identification requirements of the regulations. These additional identification requirements would require obtaining identification devices, developing procedures and processes for numbering the identification devices, and possibly developing a new State-Federal system to record the identification, if the existing State-Federal system is not adequate. Second, some cattle that had begun moving through channels prior to the change in Texas' tuberculosis status would not have been identified at their premises of origin. We agreed with the State of Texas to allow those cattle to complete their movement through normal industry channels. We would then begin enforcing certain provisions of the regulations on cattle that would be identified at their premises of origin.

The State of Texas has requested that we extend the compliance date to allow State animal health officials and other affected parties additional time to make preparations for complying with the identification and certification requirements outlined above. As noted in the interim rule, the two affected herds were depopulated, and a complete epidemiological investigation into the potential sources of the disease was conducted. We heightened our surveillance activities at slaughtering plants in Texas and in surrounding States. Also, since the fall of 2001, no affected herds have been detected in the State of Texas. Based on comments that we received on the interim rule, it

appears that the tuberculosis risk associated with the movement of nonbreeding cattle through channels to slaughter is low and that identification requirements for certain cattle destined for slaughter may be unnecessary. We are currently considering proposing changes to the regulations as a result of those comments. Therefore, we are further delaying the date for compliance with the identification and certification requirements of § 77.10(b) and (d) until September 30, 2003. As stated in the interim rule, this delay in compliance does not apply to the movement of cattle from the former modified accredited advanced zone in El Paso and Hudspeth Counties, TX.

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 20th day of December 2002.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–33001 Filed 12–30–02; 8:45 am]

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## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 7 RIN 3150–AH02**

#### **Federal Advisory Committee Act Regulations**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations on the Federal Advisory Committee Act (FACA) to conform with General Services Administration regulations. In this final rule, the Commission clarifies its practices regarding Federal advisory committee exemptions from the FACA requirements.

**EFFECTIVE DATE:** January 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** John Szabo, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone 301–415–1610, e-mail [JLS@nrc.gov](mailto:JLS@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Voluntary Consensus Standards
- III. Finding of No Significant Environmental Impact: Categorical Exclusion
- IV. Paperwork Reduction Act Statement
- V. Regulatory Analysis
- VI. Regulatory Flexibility Certification
- VII. Backfit Analysis
- VIII. Small Business Regulatory Enforcement Fairness Act

## **I. Background**

In 1972, the Congress enacted the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.) to regulate the formation and operation of advisory committees by Federal agencies. Section 7(c) of the Act requires the Administrator of the General Services Administration (GSA) to establish administrative guidelines and management controls applicable to advisory committees. Section 8(a) of the Act directs the head of each Federal agency to establish uniform administrative guidelines and management controls for advisory committees established by that agency. Agency guidelines and management controls must be consistent with GSA's directives.

In 1975, the NRC promulgated its Advisory Committee regulations as 10 CFR part 7 (40 FR 8774; March 3, 1975). A revision of Part 7 was published on June 27, 1989 (54 FR 26947), in order to maintain consistency between NRC and GSA FACA regulations, which had been issued on December 2, 1987 (52 FR 45929). The GSA issued a revision of its regulations, effective August 20, 2001 (66 FR 37728; July 19, 2001), providing administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Act. GSA's new regulations reflect recent legislative changes, shifts in Federal policy, and Federal court decisions issued since the GSA regulations were issued in 1987.

The Commission determined that NRC's advisory committee regulations should be revised to make them more consistent with the new GSA FACA regulations. On August 8, 2002, the Commission published for public comment a proposed rule revising its FACA Regulations (67 FR 51501). The NRC received no comments and is now publishing its proposal as a final rule.

The following are the most significant changes that are made to current NRC regulations by this final rule:

1. The meetings of NRC advisory committee subcommittees are exempted from FACA requirements unless the subcommittee reports and makes recommendations directly to the agency or its recommendations are adopted by its parent advisory committee without full deliberations by the parent committee.

2. There is an exemption from FACA requirements for meetings composed only of Federal employees and officials or employees of State, local, and tribal governments to exchange views,