

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 8****[FRL-5818-8]****Environmental Impact Assessment of Nongovernmental Activities in Antarctica****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Interim final rule.

SUMMARY: Public Law 104-227, the Antarctic Science, Tourism, and Conservation Act of 1996 (the Act), amends the Antarctic Conservation Act of 1978, 16 U.S.C. 2401 *et seq.*, to implement the Protocol on Environmental Protection (the Protocol) to the Antarctic Treaty of 1959 (the Treaty). The Act directs the Environmental Protection Agency (EPA) to promulgate regulations that provide for assessment of the environmental impacts of nongovernmental activities in Antarctica and for coordination of the review of information regarding environmental impact assessments received from other Parties under the Protocol. This interim final rule establishes requirements for assessments and coordination. This interim final rule applies only to nongovernmental activities that may occur through the 1998-99 austral summer, and will be replaced by a final rule.

DATES: Effective date: April 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Montgomery or Ms. Katherine Biggs, Office of Federal Activities (2252A), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; telephone: (202) 564-7157 or (202) 564-7144, respectively.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

- I. Introduction
 - A. Statutory Background
 - B. Background of the Rulemaking
- II. Description of Program and Interim Final Regulations
 - A. The Antarctic Treaty and Protocol
 - B. The Purpose of These Interim Final Regulations
 - C. Summary of the Protocol
 - D. Activities Covered by These Interim Final Regulations
 1. Persons Required to Carry Out an EIA
 2. Differences Between Governmental and Nongovernmental Activities
 3. Appropriate Level of Environmental Documentation
 4. Criteria for a CEE While this Interim Final Rule is in Effect

5. Measures to Assess and Verify Environmental Impacts
- E. Incorporation of Information, Consolidation of Environmental Documentation, and Waiver or Modification of Deadlines
- F. Submission of Environmental Documents
- G. Prohibited Acts, Enforcement and Penalties
- III. Coordination of Review of Information Received from Other Parties to the Treaty
- IV. Executive Order Clearance
- V. Regulatory Flexibility Act
- VI. Unfunded Mandates Reform Act
- VII. Paperwork Reduction Act
- VIII. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- IX. Submission to Congress and the General Accounting Office

I. Introduction**A. Statutory Background**

On October 2, 1996, the President signed into law the Antarctic Science, Tourism, and Conservation Act of 1996 (the Act). The purpose of the Act is to implement the provisions of the Protocol on Environmental Protection (the Protocol) to the Antarctic Treaty of 1959 (the Treaty). The Act provides that: "The [Environmental Protection Agency] shall, within 2 years after the date of * * * enactment * * * promulgate regulations to provide for * * * the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under Paragraph 5 of Article VII of the Treaty * * * and * * * coordination of the review of information regarding environmental impact assessment received from other Parties under the Protocol." Regulations must be "consistent with Annex I to the Protocol."

B. Background of the Rulemaking

These interim final regulations are necessary so that the United States (the U.S.) will have the ability to implement its obligations under the Protocol, as soon as the Protocol enters into force. The Protocol enters into force on the thirtieth day following the date of deposit of instruments of ratification, acceptance, approval or accession by all States which were Antarctic Treaty Consultative Parties at the date on which the Protocol was adopted. Only two such States (the Russian Federation and Japan) have yet to deposit their instruments of ratification. The United States deposited its instrument on April 17, 1997, with the knowledge that these interim final regulations would be issued contemporaneously.

It is important for the Protocol to enter into force as soon as possible, because it provides important environmental protections for Antarctica. The next meeting of the Antarctic Treaty Consultative Parties will occur in Christchurch, New Zealand, in May of 1997. A major international effort is underway to promote entry into force of this important instrument on or close to the date of this meeting. In order to promote that objective, and to prompt the remaining other States to take the necessary steps, the United States views depositing its instrument of ratification thirty days before the May meeting as a foreign policy priority. Since these interim final regulations are necessary to ensure that the United States is able to comply with its obligations under the Protocol, the implementing regulations must be in place contemporaneous with the U.S. deposit of its instrument of ratification.

Although the Act gives the Environmental Protection Agency (EPA) two years to promulgate regulations, the United States sought immediate ratification of the Protocol which, in turn, required EPA to have regulations in effect contemporaneous with ratification since the regulations provide nongovernmental operators with the specific requirements they must meet in order to comply with the Protocol. Accordingly, immediate promulgation of this interim final rule is necessary so that the United States could ratify the Protocol and implement its obligations under the Protocol as soon as the Protocol enters into force.

Because of the importance of facilitating the Protocol's prompt entry into force, EPA believes it has good cause under 5 U.S.C. 553(b)(B) to find that implementation of notice and comment procedures for the interim final rule would be contrary to the public interest and unnecessary. For these reasons, these interim final regulations are being issued without notice and an opportunity to comment. In addition, for the same reasons, under 5 U.S.C. 553(d)(3), these interim final regulations take effect on April 30, 1997.

A comment period would be contrary to the public interest because, as stated above, the resulting delay would have prevented U.S. ratification of the Protocol and thus could have delayed its entry into force. Implementing interim final regulations is the most significant step the United States can take to facilitate the ratification of the Protocol. It is important that the Protocol enter into force as soon as possible to meet the important foreign policy objectives described above. The

prompt entry of the Protocol into force will also secure as quickly as possible the significant environmental protections afforded by its provisions and annexes. Without the Protocol, there are no obligations for any countries, or their nationals, to undertake environmental impact assessments of proposed activities in Antarctica. Thus, it is in the U.S. and global public interest for EPA to issue interim final regulations thereby securing immediate U.S. ratification and promoting rapid entry into force of the Protocol.

Further, public comment on the requirements for environmental documentation, including procedures and content, in these interim final regulations would also be unnecessary because these interim final regulations incorporate the environmental documentation requirements of the Protocol, which was signed by the U.S. in 1991 and received the advice and consent of the Senate in 1996. Specifically, language from the Protocol has been incorporated into these interim final regulations regarding the content of initial environmental evaluation (IEE) and comprehensive environmental evaluation (CEE) documentation as required by the Protocol, and the timing requirements of these interim final regulations have been set out to meet those established by Annex I to the Protocol.

Finally, these interim final regulations are limited in time and effect. They apply only to nongovernmental activities to be conducted in Antarctica through the 1998–99 austral summer, the next two Antarctic seasons, and are intended to provide for a transition period over those two seasons. They are not intended to set a precedent for final regulations which the EPA will develop prior to the statutory deadline of October 2, 1998.

EPA plans extensive opportunities for public comment in the development of the final regulations mentioned above. The regulations will be proposed and promulgated in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 553) which requires notice to the public, description of the substance of the proposed rule and an opportunity for public comment. Further, EPA will prepare an Environmental Impact Statement (EIS) which will consider the environmental impacts of the proposed rule and alternatives, and which will address the environmental and regulatory issues raised by interested agencies, organizations, groups and individuals. The public may participate in the initial scoping process for the EIS,

which will include a scoping meeting to be scheduled in June 1997. Thus the public will have an opportunity to comment on the proposed regulation as well as the draft EIS (DEIS), including participation in a public meeting on both the DEIS and the proposed regulation to be scheduled in early 1998.

II. Description of Program and Interim Final Regulations

A. The Antarctic Treaty and Protocol

The Antarctic Treaty of 1959 entered into force in 1961 and guarantees freedom of scientific research in Antarctica, reserves Antarctica exclusively for peaceful purposes, establishes regular meetings of the Parties to the Treaty (Parties) to develop measures to implement the Treaty and to deal with issues which may arise, and freezes territorial claims. Currently 26 countries participate in decision-making under the Treaty as Consultative Parties. Seventeen other countries are Parties, but may not block decisions taken by consensus of the Consultative Parties.

As human activities in Antarctica intensified, concern grew regarding the effects of such activities on the Antarctic environment and the potential consequences of the development of mineral resources. In 1990, the U.S. Congress responded by passing the Antarctic Protection Act, which prohibited persons subject to U.S. jurisdiction from engaging in Antarctic mineral resource activities and called for the negotiation of an environmental protection agreement.

Over the years, the Antarctic Treaty Parties have adopted a variety of measures to protect the Antarctic environment. In 1991, the Parties adopted the Protocol on Environmental Protection which builds upon the Treaty by extending and strengthening Antarctic environmental protection. The Protocol designates Antarctica as a natural reserve dedicated to peace and science, and bans non-scientific mineral activities. The Protocol requires prior assessment of the possible environmental impacts of all activities to be carried out in Antarctica. It establishes the Committee for Environmental Protection (the Committee) to provide expert scientific and technical advice to the Parties on measures necessary to effectively implement the Protocol. The Protocol requires that draft CEEs for activities likely to have more than a minor or transitory impact on Antarctica and its dependent and associated ecosystems be provided to the Parties and to the Committee. Because legislation was

needed in order for the United States to be able to implement its obligations under the Protocol, the Antarctic Science, Tourism, and Conservation Act of 1996 was enacted by Congress. The Act directs EPA to issue regulations implementing the requirements for environmental impact assessments of nongovernmental activities, including tourism, for which the U.S. is required to give advance notice under the Treaty.

B. The Purpose of These Interim Final Regulations

The purpose of these interim final regulations is to provide for the evaluation of the potential environmental impact for the 1997–98 and 1998–99 Antarctic seasons of those nongovernmental activities in Antarctica, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Treaty and which are proposed to take place at any time through the 1998–99 austral summer. The Treaty requires notice of, *inter alia*, “all expeditions to Antarctica organized in or proceeding from” the United States. In addition, these interim final regulations provide for coordination of reviews of draft CEEs received from other Parties, in accordance with the Protocol, for activities to be carried out in Antarctica during these two seasons. The Act states that these regulations are to be consistent with Annex I to the Protocol.

Among other things, these interim final regulations specify the procedures that must be followed by any person or persons organizing a nongovernmental expedition to or within Antarctica (‘operator’ or ‘operators’) in evaluating the potential environmental impacts of their activities. These interim final regulations include the required considerations and elements relevant to environmental documentation of the evaluation, as well as procedures for submission of environmental documentation to allow the EPA to review whether the evaluation meets the obligations set forth herein and the requirements of Annex I of the Protocol.

Operators currently provide information to the National Science Foundation prior to each Antarctic season and this information is transmitted to the Department of State to meet U.S. obligations for notification pursuant to Article VII of the Treaty which requires advance notice of expeditions to and within Antarctica. This information is also part of the basic information requirements for preparation of environmental documentation, as addressed in § 8.4(a) of these interim final regulations. While

operators are required to include this information in environmental documentation, they may also continue to provide this information directly to the National Science Foundation.

C. Summary of the Protocol

This interim final rule implements Annex I to the Protocol, which describes procedures to be used in conducting environmental impact assessments of effects of activities in Antarctica. Article 8 of the Protocol provides that Parties to the Protocol ensure that the assessment procedures of Annex I are applied in planning processes leading to decisions about any activities, including nongovernmental activities, including tourism, to be undertaken in the Antarctic Treaty area for which advance notice is required under paragraph 5 of Article VII of the Treaty.

The procedures set forth in Annex I require that all proposed activities by operators be assessed, through one or more stages of assessment. If an activity will have an impact that is less than minor or transitory, only a preliminary environmental assessment must be submitted in accordance with these interim final regulations before the activity proceeds. For an activity that will have no more than a minor or transitory impact, an initial environmental evaluation (IEE) must be submitted in accordance with these interim final regulations before the activity proceeds. Finally, if it is determined (through an IEE or otherwise) that an activity is likely to have more than a minor or transitory impact, a comprehensive environmental evaluation (CEE) must be submitted in accordance with these interim final regulations before the activity proceeds.

An IEE describes an activity's purpose, location, duration and intensity, and considers alternatives and assesses impacts, including cumulative impacts, in light of existing and known proposed activities. A CEE is a detailed analysis that comprehensively evaluates the activity, its impacts, alternatives, mitigation and the like. A draft CEE must be provided to the Parties and the Committee at least 120 days before the next consultative meeting where the draft CEE may be addressed. No final decision shall be taken to proceed with any activity for which a CEE is prepared unless there has been an opportunity for consideration of the draft CEE at an Antarctic Treaty Consultative Meeting (ATCM) on the advice of the Committee (unless the decision to proceed with the activity has already been delayed more than 15 months since the date of circulation of the draft CEE). A final CEE must be circulated at least 60 days

before commencement of the proposed activity. Any decision by the operator on whether a proposed activity should proceed in either its original or modified form must be based upon the final CEE as well as other relevant considerations, and procedures must be put in place for monitoring the impact of any activity that proceeds following completion of a CEE.

Evaluations need to address Annex I to the Protocol. The information contained in an evaluation should allow the operator to make decisions based on a sound understanding of factors relevant to the likely impact of the proposed activity. An evaluation should, as appropriate, contain sufficient information to allow assessments of, and informed judgements about, the likely impacts of proposed activities on the Antarctic environment and on the value of the Antarctic environment for the conduct of scientific research. Depending on the specific circumstances surrounding the proposed activities, various factors may be relevant for consideration in the environmental impact assessment process such as the scope, duration and intensity of the activity proposed in Antarctica, cumulative impacts, impacts on other activities in the Antarctic Treaty area, and capacity to assess and verify adverse environmental impacts. Operators may also find it appropriate to consider the availability of technology and procedures for environmentally safe operations and whether there exists the capacity to respond promptly and effectively to accidents with environmental effects.

D. Activities Covered by These Interim Final Regulations

1. Persons Required to Carry Out an EIA

The requirements of these interim final regulations apply to operators of nongovernmental expeditions organized in or proceeding from the territory of the United States to Antarctica. The term "expedition" is taken from paragraph 5 of Article VII of the Treaty and encompasses all actions or activities undertaken by a nongovernmental expedition while it is in Antarctica. These interim final regulations do not apply to individual U.S. citizens or groups of citizens planning to travel to Antarctica on an expedition for which they are not acting as an operator.

For a commercial tour, typical functions of an operator would include, for example, acting as the primary person or group of persons responsible for acquiring use of vessels or aircraft, hiring expedition staff, planning itineraries, and other organizational

responsibilities. Non-commercial expeditions covered by these interim final regulations include trips by yachts, skiing or mountaineering expeditions, privately funded research expeditions, and other nongovernmental or nongovernment-sponsored activities.

These interim final regulations do not apply to U.S. citizens who participate in tours organized in and proceeding from countries other than the United States. As provided in the Protocol, the requirements do not apply to activities undertaken in the Antarctic Treaty area that are governed by the Convention on the Conservation of Antarctic Marine Living Resources or the Convention for the Conservation of Antarctic Seals. Persons traveling to Antarctica are subject to the requirements of the Marine Mammal Protection Act, 16 U.S.C. 1371 *et seq.*

2. Differences Between Governmental and Nongovernmental Activities

These interim final regulations do not apply to governmental activities. *c.f.* 45 CFR 641.10 through 641.22 (National Science Foundation regulations for assessing impacts of governmental activities in Antarctica). However, EPA believes that, to the extent practicable, similar procedures should generally be used for assessing both governmental and nongovernmental activities. Consistent with this, these interim final regulations generally establish procedures for assessing the impacts of nongovernmental activities in Antarctica similar to those used for governmental activities under the National Science Foundation regulations.

However, EPA also recognizes that it will not always be appropriate to apply identical standards and procedures for governmental and nongovernmental activities. Specifically, numerous mechanisms and processes exist to ensure public scrutiny and accountability of governmental activities. In some instances, no comparable mechanisms or processes exist for nongovernmental activities. Thus, these interim final regulations provide for direct federal review of each nongovernmental environmental impact assessment by giving EPA authority to review, in consultation with other interested federal agencies, nongovernmental environmental impact assessments for compliance with the requirements of Annex I to the Protocol and these interim final regulations.

To promote consistency regarding environmental documentation, EPA intends to consult with the National Science Foundation and other U.S. government agencies with appropriate

expertise in the course of reviewing the assessments of proposed nongovernmental activities in the Antarctic. Further, following the final response from the operator to EPA's initial comments, EPA will obtain the concurrence of the National Science Foundation in making any determination that the environmental documentation submitted by an operator fails to meet the requirements under Article 8 and Annex I to the Protocol and the provisions of these interim final regulations.

3. Appropriate Level of Environmental Documentation

(a) *Preliminary Environmental Review Memorandum (PERM)*. These interim final regulations provide that an operator who asserts that an expedition will have less than a minor or transitory impact must provide a Preliminary Environmental Review Memorandum (PERM) to the EPA no later than 180 days before the proposed departure of the expedition to Antarctica. The timing requirement has been established to provide sufficient time for the operator to prepare an IEE if one is needed. The EPA, in consultation with other interested federal agencies, will review the PERM to determine if it is sufficient to demonstrate that the activity will have less than a minor or transitory impact or whether additional environmental documentation, i.e., an IEE or CEE, is required to meet the obligations of Annex I. The EPA will provide its comments to the operator within fifteen (15) days of receipt of the PERM, and the operator will have seventy-five (75) days to prepare a revised PERM or an IEE, if necessary. Following the final response from the operator, EPA may make a finding that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of these interim final regulations. This finding will be made with the concurrence of the National Science Foundation. If EPA does not provide such notice within thirty (30) days, the operator will be deemed to have met the requirements of these interim final regulations.

If EPA recommends an IEE and one is prepared and submitted within the seventy-five (75) day response period, the schedule for review will follow the time frames set out for an IEE in these interim final regulations. (See: Section II.D.3(b), below.) Should EPA recommend a CEE, timing requirements applicable to CEEs may necessitate a delay in plans to initiate a proposed activity. Operators are encouraged to

consult with EPA on options in this regard.

(b) *Initial Environmental Evaluation (IEE)*. Article 2 of Annex I to the Protocol requires that unless it has been determined that an activity will have less than a minor or transitory impact, or unless a CEE is being prepared in accordance with Article 3 of Annex I, an IEE must be prepared. Among the items to be included in an IEE to document that an activity will have no more than a minor or transitory impact are the cumulative impacts of the proposed activity in light of existing and known proposed activities. Expeditions, by their nature, involve the transport of persons to Antarctica which will result in physical impacts, which may include, but not be limited to: air emissions, discharges to the ocean, noise from engines, landings for sight-seeing, and activities by visitors near wildlife. Accordingly, it is EPA's view that, at minimum, an IEE is the appropriate level of environmental documentation for proposed activities where multiples of the activity over time are likely and may create a cumulative impact, unless an existing IEE or CEE supports a finding that the type of activity proposed results in a less than minor or transitory cumulative impact. However, as noted below, it is also EPA's view that the types of nongovernmental activities that are currently being carried out will typically be unlikely to have impacts that are more than minor or transitory assuming that activities will be carried out in accordance with the guidelines set forth in the ATCM Recommendation XVIII-1, Tourism and non-Governmental Activities, the relevant provisions of other U.S. statutes, and Annexes II-V to the Protocol. In the event that a determination is made that a CEE is needed to meet the requirements of Annex I to the Protocol and the provisions of these interim final regulations, timing requirements applicable to CEEs may necessitate a delay in plans to initiate a proposed activity, and operators are encouraged to consult with EPA on options. The EPA will consider the question of the appropriate level of review in more detail in developing the final rule, utilizing the experience gained during the implementation of this interim final rule and public comments provided in the final rule-making process.

Any operator who wishes to make an expedition to Antarctica during the time period covered by these interim final regulations is required to provide an IEE to EPA no less than ninety (90) days prior to the proposed departure of the expedition to Antarctica unless: (1) A

decision has been made to prepare a CEE, or (2) the operator has submitted a PERM and there has not been a finding within the time limits of these interim final regulations that the PERM fails to meet the requirements under Annex I to the Protocol and the provisions of these interim final regulations.

The EPA will provide its comments to the operator within thirty (30) days of receipt of the IEE, and the operator will have forty-five (45) days to prepare a revised IEE, if necessary. Following the final response from the operator, EPA may make a finding that the documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of these interim final regulations. This finding will be made with the concurrence of the National Science Foundation. If such a notice is required, EPA will provide it within fifteen (15) days of receiving the final IEE from the operator or, if the operator does not provide a final IEE, within sixty (60) days following EPA's comments on the original IEE. If EPA does not provide notice within these time limits, the operator will be deemed to have met the requirements of these interim final regulations, provided that procedures, which may include appropriate monitoring, are carried out to assess and verify the impact of the activity.

If a CEE is required, the operator must adhere to the time limits applicable to such documentation. (See: Section II.D.3.(c), below.) In the event that a determination is made that a CEE is required, EPA, at the operator's request, will consult with the operator regarding possible changes in the proposed activity which would allow preparation of an IEE.

The EPA, upon receipt of an IEE, will electronically publish notice of its receipt on the Office of Federal Activities' World Wide Web Site: <http://es.inel.gov/oeca/ofa/>. The Department of State will circulate to the Parties and make publicly available a copy of an annual list of IEEs prepared by U.S. operators in accordance with Article 2 and any decisions taken in consequence thereof. Any IEE prepared in accordance with these interim final regulations shall be made available by the EPA on request.

(c) *Comprehensive Environmental Evaluation (CEE)*. Article 3(4), of Annex I of the Protocol requires that draft CEEs be distributed to all Parties and the Committee 120 days in advance of the next Antarctic Treaty Consultative Meeting at which the CEE may be addressed. Since the next ATCM is now scheduled for May 19-30, 1997, CEEs prepared for nongovernmental activities

in the 1997–1998 season would have to have been distributed by January 1997, should the Protocol enter into force before or during the 1997–1998 season. Because it is now impossible for a CEE to be submitted for the 1997–1998 season as required by the Protocol, modifications to the proposed expedition which would eliminate any impacts that might require a CEE, and thereby allow for an IEE, would be necessary in order to comply with these interim final regulations and the Protocol. Operators who are anticipating activities for the 1997–1998 season which would require a CEE are encouraged to consult with the EPA as soon as possible.

For the 1998–1999 season, any operator who plans an activity which would require a CEE must submit a draft of the CEE to EPA by December 1, 1997. Within fifteen (15) days of receipt of the draft CEE, EPA will send it to the Department of State for transmittal as a draft CEE to other Parties in January 1998 and EPA will publish notice of receipt of the CEE in the **Federal Register** and will provide copies to any person upon request. The EPA will accept public comments on the CEE for a period of ninety (90) days following notice in the **Federal Register**. The EPA will make these public comments available to the operator.

The EPA, in consultation with other interested federal agencies, will review the CEE to determine if it meets the requirements under Annex I to the Protocol and the provisions of these interim final regulations and transmit its comments to the operator within 120 days following publication of notice of availability in the **Federal Register** to allow for the inclusion of any additional information in the CEE. The operator shall prepare a final CEE that addresses and includes or summarizes any comments on the draft CEE received from EPA, the public and the Parties, including comments offered at the XXII Antarctic Treaty Consultative Meeting in 1998. The final CEE shall be sent to EPA at least seventy-five (75) days before proposed departure. Following the final response from the operator, the EPA will inform the operator if EPA, with the concurrence of the National Science Foundation, makes the finding that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of these interim final regulations. This notification will occur within fifteen (15) days of submittal of the final CEE if the CEE is submitted by the operator within the time limits set out in these interim final regulations. If no final CEE

is submitted by the operator, or if the operator fails to meet these time limits, EPA will provide such notification sixty (60) days prior to departure of the expedition. If, after receipt of such notification, the operator proceeds with the expedition without fulfilling the requirements of these interim final regulations, the operator is subject to enforcement proceedings pursuant to Sections 7, 8, and 9 of the Antarctic Conservation Act, as amended by the Act; 16 U.S.C. 2407, 2408, 2409, and 45 CFR part 672. If EPA does not provide notice, the operator will be deemed to have met the requirements of these interim final regulations provided that procedures, which include appropriate monitoring, are carried out to assess and verify the impact of the activity. The EPA will transmit the final CEE to the Department of State which shall circulate it to all Parties no later than sixty (60) days before proposed departure of the expedition, along with a notice of any decisions by the operator relating thereto. The EPA will publish a notice of availability of the final CEE in the **Federal Register**.

Operators are encouraged to consult with the EPA as early as possible if there are questions as to whether a CEE will be required for a proposed expedition.

4. Criteria for a CEE While this Interim Final Rule is in Effect

Article 3 of Annex I to the Protocol requires a CEE when it is determined that an activity is likely to have more than a minor or transitory impact. While the need for a CEE will be evaluated for each activity on a case-by-case basis, it is EPA's view that the type of nongovernmental activities that are currently being carried out will typically be unlikely to have impacts that are more than minor or transitory.

However, the need for a CEE could be triggered by a proposed activity which represents a major departure from current nongovernmental activities, resulting in a large increase in adverse environmental impact at a site. Similarly, a CEE may be required if an activity is likely to give rise to particularly complex, cumulative, large-scale or irreversible effects, such as perturbations in unique and very sensitive biological systems. An example of an activity which might require a CEE would be the construction and operation of a new crushed rock airstrip or runway.

In evaluating whether a CEE is the appropriate level of environmental documentation, the EPA will consider the impact in terms of the context of the Antarctic environment and the intensity

of the activity. The Antarctic environment is for the most part unspoiled, has intrinsic value, and is of great value to science and to humankind's overall understanding of the global environment. In addition, because of the location and uniqueness of the ecosystem, there would likely be great difficulty responding to environmental threats and mitigating damage to the Antarctic ecosystem. The EPA believes a comparable threshold should be applied in determining whether an activity may have an impact that is more than minor or transitory under these interim final regulations as is used in determining if the activity will have a 'significant' effect for purposes of the National Environmental Policy Act. C.f. 40 CFR 1508.27

5. Measures to Assess and Verify Environmental Impacts

The Protocol and these interim final regulations require an operator to employ procedures to assess and provide a regular and verifiable record of the actual impacts of any activity which proceeds on the basis of an IEE or CEE. The record developed through these measures shall be designed to: (a) Enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and (b) provide information useful for minimizing and mitigating those impacts, and, where appropriate, on the need for suspension, cancellation, or modification of the activity. Moreover, an operator must monitor key environmental indicators for an activity proceeding on the basis of a CEE. An operator may also need to carry out monitoring in order to assess and verify the impact of an activity for which an IEE has been prepared.

For activities requiring an IEE, an operator should be able to use procedures currently being voluntarily utilized by operators to provide the required information. For example, such information could include, as appropriate and to the best of the operator's knowledge: identification of the number of tourists put ashore at each site, the number and location of each landing site, the total number of tourists at each site per ship and for the season; number of times the site has been visited in the past; the number of times the site is expected to be visited in the forthcoming season; the times of the year that visits are expected to occur (e.g., before, during, or after the penguin breeding season); the number of visitors expected to be put ashore at the site at any one time and over the course of a particular visit; what visitors are expected to do while at the site;

verification that guidelines for tourists are followed; description of any tourist exceptions to the landing guidelines; and description of any activity requiring mitigation, the mitigative actions undertaken, and the actual or projected outcome of the mitigation.

These interim final regulations do not set out detailed monitoring procedures for activities requiring a CEE because the Parties are still working to identify monitoring approaches which can best support the Protocol's implementation. Thus, should an activity require a CEE, the operator should consult with EPA to: (a) Identify the monitoring regime appropriate to that activity, and (b) determine whether and how the operator might utilize relevant monitoring data collected by the U.S. Antarctic Program. The EPA will consult with the National Science Foundation and other interested federal agencies regarding this monitoring regime.

The EPA, in consultation with the National Science Foundation and other interested federal agencies, will review the results of the measures employed pursuant to these interim final regulations and may provide additional guidance in the final rule.

E. Incorporation of Information, Consolidation of Environmental Documentation, and Waiver or Modification of Deadlines

The EPA is strongly committed to minimizing unnecessary paperwork and to implementation of these interim final regulations such that undue burden is not placed on operators, particularly in view of the time requirements associated with environmental documentation requirements. Therefore, provided that documentation complies with all applicable provisions of Annex I to the Protocol and these interim final regulations, and, provided that the environmental documentation is appropriate in light of the specific circumstances of each operator's expedition or expeditions, the EPA will allow the following approaches to documentation: (1) Material may be incorporated by referring to it in the environmental document with its content briefly described when the cited material is reasonably available to the EPA; (2) more than one proposed expedition by an operator may be included within one environmental document and may, if appropriate, include a single discussion of components of the environmental analysis which are applicable to some or all of the proposed expeditions; and (3) one environmental document may also be used to address expeditions being

carried out by more than one operator, provided that the environmental documentation includes the names of each operator for which the environmental documentation is being submitted pursuant to obligations under these interim final regulations. Further, the EPA may waive or modify the deadlines of these interim final regulations if the Protocol has not yet entered into force or where EPA determines an operator is acting in good faith and that circumstances outside the control of the operator created delays, provided that environmental documentation fully meets deadlines under the Protocol.

F. Submission of Environmental Documents

The operator shall submit five copies of its environmental documentation, along with an electronic copy in HTML format, if available, to the EPA by mail to: U.S. Environmental Protection Agency, Office of Federal Activities, EIS Filing—Mail Code 2252-A, 401 M Street SW, Washington, DC 20460.

Environmental documents may also be sent by special delivery (Federal Express, United Parcel Service, etc.) or hand-carried to: U.S. Environmental Protection Agency, Office of Federal Activities, EIS Filing—Mail Code 2252-A, Room 7241, Ariel Rios Building (South Oval Lobby), 1200 Pennsylvania Avenue, NW, Washington, DC 20044.

An operator who wishes to may notify and submit environmental documentation at an earlier date than required for this interim final rule. The EPA review process, including notification for public review and comment, will commence with the submittal of environmental documentation and will follow deadlines for response indicated in the appropriate sections of this interim final rule.

G. Prohibited Acts, Enforcement and Penalties

It shall be unlawful for any operator to violate these interim final regulations. An operator who violates any of these interim final regulations is subject to enforcement, which may include civil and criminal enforcement proceedings, and penalties, pursuant to Sections 7, 8, and 9 of the Antarctic Conservation Act, as amended by the Act; 16 U.S.C. 2407, 2408, 2409, and 45 CFR part 672.

III. Coordination of Review of Information Received from Other Parties to the Treaty

Article 6 of Annex I to the Protocol provides that the following information shall be circulated to the Parties,

forwarded to the Committee for Environmental Protection, and made publicly available: (1) A description of national procedures for considering the environmental impacts of proposed activities; (2) an annual list of any IEEs and any decisions taken in consequence thereof; (3) significant information obtained and any action taken in consequence thereof with regard to monitoring from IEEs and CEEs; and (4) information in a final CEE. In addition, Article 6 requires that any IEE be made available on request, and Article 3 requires that draft CEEs be circulated to all Parties, who shall make them publicly available. A period of ninety (90) days is allowed for the receipt of comments. To implement these requirements of the Protocol, this interim final rule sets out the process for circulation of this information within the United States.

Upon receipt of a CEE from another Party, the Department of State shall publish notice of receipt in the **Federal Register** and shall circulate a copy of the CEE to all interested federal agencies. The Department of State shall coordinate responses from federal agencies to the CEE and shall transmit the coordinated response, if any, to the Party which has circulated the CEE. The Department of State shall make a copy of the CEE available upon request to the public. Members of the U.S. public should comment directly to the operator who has drafted the CEE and provide a copy to the EPA for its consideration.

Upon receipt of the annual list from another Party of IEEs prepared in accordance with Article 2 of Annex I and any decisions taken in consequence thereof, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy of any list of IEEs from other Parties prepared in accordance with Article 2 and any decisions taken in consequence thereof available upon request to the public.

Upon receipt of a description of appropriate national procedures for environmental impact statements from another Party, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make such descriptions available upon request to the public.

Upon receipt from another Party of significant information obtained, and any action taken in consequence therefrom from procedures put in place with regard to monitoring pursuant to Articles 2(2) and 5 of Annex I to the Protocol, the Department of State shall circulate a copy to all interested federal agencies. Notification of receipt of significant information regarding

monitoring will be published electronically on the EPA Office of Federal Activities' World Wide Web Site at: <http://es.inel.gov/oeca/ofa/>. The Department of State shall make a copy of this information available upon request to the public.

Upon receipt of a final CEE from another Party, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy available upon request to the public.

IV. Executive Order Clearance

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this interim final rule is a "significant regulatory action." Although none of the first three criteria apply, this interim final rule raises novel legal or policy issues arising out of legal mandates under P.L. 104-227, the Antarctic Science, Tourism, and Conservation Act of 1996 and the Protocol on Environmental Protection to the Antarctic Treaty of 1959. Accordingly, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

V. Regulatory Flexibility Act

The EPA has determined that this interim final rule being issued today is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to conduct a regulatory flexibility analysis of any significant impact the interim final rule will have

on a substantial number of small entities. By its terms, the RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Today's interim final rule is not subject to notice and comment requirements under the APA or any other statute. The interim final rule is subject to the APA, but the EPA has invoked the "good cause" exemption under APA, 5 U.S.C. 553(b)(B), from the APA notice and comment requirements.

The EPA nonetheless believes that because this interim final rule only requires assessment of environmental impacts the effects on small businesses will be limited primarily to the cost of preparing such an analysis and that the requirements are no greater than necessary to ensure that the United States will be in compliance with its international obligations under the Protocol and the Treaty. Further, EPA has included a number of provisions, e.g., incorporation of information and consolidation of documentation, in this interim final rule which should minimize the cost of such an analysis.

VI. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The UMRA does not apply to this interim final rule because it is necessary for the ratification and implementation of international treaty obligations. Thus, today's interim final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In any event, EPA has determined that this interim final rule does not contain a Federal mandate that may result in annual expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector. The EPA has also determined that this interim final rule contains no regulatory requirements that might significantly or uniquely affect small governments under section 203 of the UMRA.

VII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under Section 1320.13 of this Act, EPA has requested OMB to authorize emergency processing. The OMB's approval was requested by April 17, 1997. An Information Collection Request (ICR)

document has been prepared by EPA (ICR No. 1808.01) and a copy may be obtained from Ms. Sandy Farmer, Regulatory Information Division (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone: (202) 260-2740.

This emergency request for ICR approval along with the Interim Final Rule are necessary so that implementing regulations will be in place contemporaneously with the United States' ratification of the Protocol and in order to implement its obligations under the Protocol as soon as the Protocol enters into force. The Interim Final Rule provides nongovernmental operators with the specific environmental documentation requirements they must meet in order to comply with the Protocol.

Nongovernmental operators, including tour operators, conducting expeditions to Antarctica are required to submit environmental documentation to EPA that evaluates the potential environmental impact of their proposed activities. If EPA has no comments, or if the documentation is satisfactorily revised in response to EPA's comments, and the operator does not receive a notice from EPA that the environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of these interim final regulations, the operator will have no further obligations pursuant to the applicable requirements of these interim final regulations provided that any appropriate measures, which may include monitoring, are put in place to assess and verify the impact of the activity. The type of environmental document required depends upon the nature and intensity of the environmental impacts that could result from the activity under consideration. The interim final rule provides for incorporation of material into an environmental document by referring to it in the document when the effect will be to reduce paperwork. Further, an operator may include more than one proposed expedition within one environmental document and one environmental document may also be used to address expeditions being carried out by more than one operator further reducing burden. For the limited time the Interim Final Rule will be in effect, the EPA anticipates that operators will make one submittal per year for all of their expeditions for that year. No capital costs or operational and maintenance costs are anticipated to be incurred as a result of this ICR.

Frequency of Reporting: Once per year.

Affected Public: Businesses, other nongovernmental entities including for profit entities, and not for profit institutions.

Number of Respondents: 8.

Estimated Average Time Per Respondent: 120 Hours.

Total Annual Burden Hours: 960.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

VIII. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The provisions of Executive Order 12898 do not apply to this regulatory action.

IX. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this interim final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the interim final rule in today's **Federal Register**. This interim final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 8

Environmental protection, Antarctica, Enforcement, Environmental documentation, Environmental impact assessment, Prohibited acts, Penalties.

Dated: April 23, 1997.

Carol M. Browner,
Administrator.

Therefore, for the reasons set out in the Preamble, Title 40 Chapter 1 of the Code of Federal Regulations is amended by adding a new Part 8 as follows:

PART 8—ENVIRONMENTAL IMPACT ASSESSMENT OF NONGOVERNMENTAL ACTIVITIES IN ANTARCTICA

Sec.

- 8.1 Purpose.
- 8.2 Applicability and effect.
- 8.3 Definitions.
- 8.4 Preparation of environmental documents, generally.
- 8.5 Submission of environmental documents.
- 8.6 Preliminary environmental review.
- 8.7 Initial environmental evaluation.
- 8.8 Comprehensive environmental evaluation.
- 8.9 Measures to assess and verify environmental impacts.
- 8.10 Cases of emergency.
- 8.11 Prohibited acts, enforcement and penalties.
- 8.12 Coordination of reviews from other Parties.

Authority: 16 U.S.C. 2401 *et seq.*, as amended, 16 U.S.C. 2403a.

§ 8.1 Purpose.

(a) This part is issued pursuant to the Antarctic Science, Tourism, and Conservation Act of 1996. As provided in that Act, this part implements the requirements of Article 8 and Annex I to the Protocol on Environmental Protection to the Antarctic Treaty of 1959 and provides for:

(1) the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty of 1959; and

(2) coordination of the review of information regarding environmental impact assessment received by the United States from other Parties under the Protocol.

(b) The procedures in this part are designed to: Ensure that nongovernmental operators identify and assess the potential impacts of their proposed activities, including tourism, on the Antarctic environment; that operators consider these impacts in deciding whether or how to proceed with proposed activities; and that operators provide environmental documentation pursuant to the Act and Annex I of the Protocol. These procedures are consistent with and implement the environmental impact assessment provisions of Article 8 and

Annex I to the Protocol on Environmental Protection to the Antarctic Treaty.

§ 8.2 Applicability and effect.

(a) This part is intended to ensure that potential environmental effects of nongovernmental activities undertaken in Antarctica are appropriately identified and considered by the operator during the planning process and that to the extent practicable, appropriate environmental safeguards which would mitigate or prevent adverse impacts on the Antarctic environment are identified by the operator.

(b) The requirements set forth in this part apply to nongovernmental activities for which the United States is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty of 1959: All nongovernmental expeditions to and within Antarctica organized in or proceeding from its territory.

(c) This part does not apply to activities undertaken in the Antarctic Treaty area that are governed by the Convention on the Conservation of Antarctic Marine Living Resources or the Convention for the Conservation of Antarctic Seals. Persons traveling to Antarctica are subject to the requirements of the Marine Mammal Protection Act, 16 U.S.C. 1371 *et seq.*

(d) This part is effective on April 30, 1997. This part will expire upon the earlier of the end of the 1998–99 austral summer season or upon issuance of a final regulation.

§ 8.3 Definitions.

As used in this part:

Act means 16 U.S.C. 2401 *et seq.*, Public Law 104–227, the Antarctic Science, Tourism, and Conservation Act of 1996.

Annex I refers to Annex I, Environmental Impact Assessment, of the Protocol.

Antarctica means the Antarctic Treaty area; i.e., the area south of 60 degrees south latitude.

Antarctic environment means the natural and physical environment of Antarctica and its dependent and associated ecosystems, but excludes social, economic, and other environments.

Antarctic Treaty area means the area south of 60 degrees south latitude.

Antarctic Treaty Consultative Meeting (ATCM) means a meeting of the Parties to the Antarctic Treaty, held pursuant to Article IX(1) of the Treaty.

Comprehensive Environmental Evaluation (CEE) means a study of the reasonably foreseeable potential effects

of a proposed activity on the Antarctic environment, prepared in accordance with the provisions of this part and includes all comments received thereon. (See: 40 CFR 8.8.)

Environmental document or environmental documentation (Document) means a preliminary environmental review memorandum, an initial environmental evaluation, or a comprehensive environmental evaluation.

Environmental impact assessment (EIA) means the environmental review process required by the provisions of this part and by Annex I of the Protocol, and includes preparation by the operator and U.S. government review of an environmental document, and public access to and circulation of environmental documents to other Parties and the Committee on Environmental Protection as required by Annex I of the Protocol.

EPA means the Environmental Protection Agency.

Expedition means any activity undertaken by one or more nongovernmental persons organized within or proceeding from the United States to or within the Antarctic Treaty area for which advance notification is required under Paragraph 5 of Article VII of the Treaty.

Impact means impact on the Antarctic environment and dependent and associated ecosystems.

Initial Environmental Evaluation (IEE) means a study of the reasonably foreseeable potential effects of a proposed activity on the Antarctic environment prepared in accordance with 40 CFR 8.7.

Operator or operators means any person or persons organizing a nongovernmental expedition to or within Antarctica.

Person has the meaning given that term in section 1 of title 1, United States Code, and includes any person subject to the jurisdiction of the United States except that the term does not include any department, agency, or other instrumentality of the Federal Government.

Preliminary environmental review means the environmental review described under that term in 40 CFR 8.6.

Preliminary Environmental Review Memorandum (PERM) means the documentation supporting the conclusion of the preliminary environmental review that the impact of a proposed activity will be less than minor or transitory on the Antarctic environment.

Protocol means the Protocol on Environmental Protection to the Antarctic Treaty, done at Madrid,

October 4, 1991, and all annexes thereto which are in force for the United States.

This part means 40 CFR part 8.

§ 8.4 Preparation of environmental documents, generally.

(a) *Basic information requirements.* In addition to the information required pursuant to other sections of this part, all environmental documents shall contain the following:

- (1) The name, mailing address, and phone number of the operator;
- (2) The anticipated date(s) of departure of each expedition to Antarctica;
- (3) An estimate of the number of persons in each expedition;
- (4) The means of conveyance of expedition(s) to and within Antarctica;
- (5) Estimated length of stay of each expedition in Antarctica;
- (6) Information on proposed landing sites in Antarctica; and
- (7) Information concerning training of staff, supervision of expedition members, and what other measures, if any, that will be taken to avoid or minimize possible environmental impacts.

(b) *Preparation of an environmental document.* Unless an operator determines and documents that a proposed activity will have less than a minor or transitory impact on the Antarctic environment, the operator will prepare an IEE or CEE in accordance with this part. In making the determination what level of environmental documentation is appropriate, the operator should consider, as applicable, whether and to what degree the proposed activity:

- (1) Has the potential to adversely affect the Antarctic environment;
- (2) May adversely affect climate or weather patterns;
- (3) May adversely affect air or water quality;
- (4) May affect atmospheric, terrestrial (including aquatic), glacial, or marine environments;
- (5) May detrimentally affect the distribution, abundance, or productivity of species, or populations of species of fauna and flora;
- (6) May further jeopardize endangered or threatened species or populations of such species;
- (7) May degrade, or pose substantial risk to, areas of biological, scientific, historic, aesthetic, or wilderness significance;
- (8) Has highly uncertain environmental effects, or involves unique or unknown environmental risks; or
- (9) Together with other activities, the effects of any one of which is

individually insignificant, may have at least minor or transitory cumulative environmental effects.

(c) *Type of environmental document.* The type of environmental document required under this part depends upon the nature and intensity of the environmental impacts that could result from the activity under consideration. A PERM must be prepared by the operator to document the conclusion of the operator's preliminary environmental review that the impact of a proposed activity on the Antarctic environment will be less than minor or transitory. (See: 40 CFR 8.6.) An IEE must be prepared by the operator for proposed activities which may have at least (but no more than) a minor or transitory impact on the Antarctic environment. (See: 40 CFR 8.7.) A CEE must be prepared by the operator if an IEE indicates, or if it is otherwise determined, that a proposed activity is likely to have more than a minor or transitory impact on the Antarctic environment (See: 40 CFR 8.8.)

(d) *Incorporation of information and consolidation of environmental documentation* (1) An operator may incorporate material into an environmental document by referring to it in the document when the effect will be to reduce paperwork without impeding the review of the environmental document by EPA and other Federal agencies. The incorporated material shall be cited and its content briefly described. No material may be incorporated by referring to it in the document unless it is reasonably available to the EPA.

(2) Provided that environmental documentation complies with all applicable provisions of Annex I to the Protocol and this part and is appropriate in light of the specific circumstances of the operator's proposed expedition or expeditions, an operator may include more than one proposed expedition within one environmental document and one environmental document may also be used to address expeditions being carried out by more than one operator provided that the environmental document indicates the names of each operator for which the environmental documentation is being submitted pursuant to obligations under this part.

§ 8.5 Submission of environmental documents.

(a) An operator shall submit environmental documentation to the EPA for review. The EPA, in consultation with other interested federal agencies, will carry out a review to determine if the submitted

environmental documentation meets the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. The EPA will provide its comments, if any, on the environmental documentation to the operator and will consult with the operator regarding any suggested revisions. If EPA has no comments, or if the documentation is satisfactorily revised in response to EPA's comments, and the operator does not receive a notice from EPA that the environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part, the operator will have no further obligations pursuant to the applicable requirements of this part provided that any appropriate measures, which may include monitoring, are put in place to assess and verify the impact of the activity. Alternatively, following final response from the operator, the EPA, in consultation with other federal agencies and with the concurrence of the National Science Foundation, will inform the operator that EPA finds that the environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. If the operator then proceeds with the expedition without fulfilling the requirements of this part, the operator is subject to enforcement proceedings pursuant to sections 7, 8, and 9 of the Antarctic Conservation Act, as amended by the Act; 16 U.S.C. 2407, 2408, 2409, and 45 CFR Part 672.

(b) The EPA may waive or modify deadlines pursuant to this part where EPA determines an operator is acting in good faith and that circumstances outside the control of the operator created delays, provided that the environmental documentation fully meets deadlines under the Protocol.

§ 8.6 Preliminary environmental review.

(a) Unless an operator has determined to prepare an IEE or CEE, the operator shall conduct a preliminary environmental review that assesses the potential direct and reasonably foreseeable indirect impacts on the Antarctic environment of the proposed expedition. A Preliminary Environmental Review Memorandum (PERM) shall contain sufficient detail to assess whether the proposed activity may have less than a minor or transitory impact, and shall be submitted to the EPA for review no less than 180 days before the proposed departure of the expedition. The EPA, in consultation with other interested federal agencies, will review the PERM to determine if it is sufficient to demonstrate that the activity will have less than a minor or

transitory impact or whether additional environmental documentation, i.e., an IEE or CEE, is required to meet the obligations of Article 8 and Annex I of the Protocol. The EPA will provide its comments to the operator within fifteen (15) days of receipt of the PERM, and the operator shall have seventy-five (75) days to prepare a revised PERM or an IEE, if necessary. Following the final response from the operator, EPA may make a finding that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. This finding will be made with the concurrence of the National Science Foundation. If EPA does not provide such notice within thirty (30) days, the operator will be deemed to have met the requirements of this part provided that any required procedures, which may include appropriate monitoring, are put in place to assess and verify the impact of the activity.

(b) If EPA recommends an IEE and one is prepared and submitted within the seventy-five (75) day response period, it will be reviewed under the time frames set out for an IEE in 40 CFR 8.7. If EPA recommends a CEE and one is prepared, it will be reviewed under the time frames set out for a CEE in 40 CFR 8.8.

§ 8.7 Initial environmental evaluation.

(a) *Submission of IEE to the EPA.* Unless a PERM has been submitted pursuant to 40 CFR 8.6 which meets the environmental documentation requirements under Article 8 and Annex I to the Protocol and the provisions of this part or a CEE is being prepared, an IEE shall be submitted by the operator to the EPA no fewer than ninety (90) days before the proposed departure of the expedition.

(b) *Contents.* An IEE shall contain sufficient detail to assess whether a proposed activity may have more than a minor or transitory impact on the Antarctic environment and shall include the following information:

(1) A description of the proposed activity, including its purpose, location, duration, and intensity; and

(2) Consideration of alternatives to the proposed activity and any impacts that the proposed activity may have on the Antarctic environment, including consideration of cumulative impacts in light of existing and known proposed activities.

(c) *Further environmental review.* (1) The EPA, in consultation with other interested federal agencies, will review an IEE to determine whether the IEE meets the requirements under Annex I to the Protocol and the provisions of

this part. The EPA will provide its comments to the operator within thirty (30) days of receipt of the IEE, and the operator will have forty-five (45) days to prepare a revised IEE, if necessary. Following the final response from the operator, EPA may make a finding that the documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. This finding will be made with the concurrence of the National Science Foundation. If such a notice is required, EPA will provide it within fifteen (15) days of receiving the final IEE from the operator or, if the operator does not provide a final IEE, within sixty (60) days following EPA's comments on the original IEE. If EPA does not provide notice within these time limits, the operator will be deemed to have met the requirements of this part provided that any required procedures, which may include appropriate monitoring, are put in place to assess and verify the impact of the activity.

(2) If a CEE is required, the operator must adhere to the time limits applicable to such documentation. (See: 40 CFR 8.8.) In this event EPA, at the operator's request, will consult with the operator regarding possible changes in the proposed activity which would allow preparation of an IEE.

§ 8.8 Comprehensive environmental evaluation.

(a) *Preparation of a CEE.* Unless a PERM or an IEE has been submitted and determined to meet the environmental documentation requirements of this part, the operator shall prepare a CEE. A CEE shall contain sufficient information to enable informed consideration of the reasonably foreseeable potential environmental effects of a proposed activity and possible alternatives to that proposed activity. A CEE shall include the following:

(1) A description of the proposed activity, including its purpose, location, duration and intensity, and possible alternatives to the activity, including the alternative of not proceeding, and the consequences of those alternatives;

(2) A description of the initial environmental reference state with which predicted changes are to be compared and a prediction of the future environmental reference state in the absence of the proposed activity;

(3) A description of the methods and data used to forecast the impacts of the proposed activity;

(4) Estimation of the nature, extent, duration and intensity of the likely direct impacts of the proposed activity;

(5) A consideration of possible indirect or second order impacts from the proposed activity;

(6) A consideration of cumulative impacts of the proposed activity in light of existing activities and other known planned activities;

(7) Identification of measures, including monitoring programs, that could be taken to minimize or mitigate impacts of the proposed activity and to detect unforeseen impacts and that could provide early warning of any adverse effects of the activity as well as to deal promptly and effectively with accidents;

(8) Identification of unavoidable impacts of the proposed activity;

(9) Consideration of the effects of the proposed activity on the conduct of scientific research and on other existing uses and values;

(10) An identification of gaps in knowledge and uncertainties encountered in compiling the information required under this section;

(11) A non-technical summary of the information provided under this section; and

(12) The name and address of the person or organization which prepared the CEE and the address to which comments thereon should be directed.

(b) *Submission of Draft CEE to the EPA and Circulation to Other Parties.*

(1) For the 1998–1999 season, any operator who plans a nongovernmental expedition which would require a CEE must submit a draft of the CEE by December 1, 1997. Within fifteen (15) days of receipt of the draft CEE, EPA will: send it to the Department of State which will circulate it to all Parties to the Protocol and forward it to the Committee for Environmental Protection established by the Protocol, and publish notice of receipt of the CEE and request for comments on the CEE in the **Federal Register**, and will provide copies to any person upon request. The EPA will accept public comments on the CEE for a period of ninety (90) days following notice in the **Federal Register**. The EPA, in consultation with other interested federal agencies, will evaluate the CEE to determine if the CEE meets the requirements under Article 8 and Annex I to the Protocol and the provisions of this part and will transmit its comments to the operator within 120 days following publication in the **Federal Register** of the notice of availability of the CEE.

(2) The operator shall send a final CEE to EPA at least seventy-five (75) days before commencement of the proposed activity in the Antarctic Treaty area. The CEE must include (or summarize) any comments on the draft CEE received

from EPA, the public, and the Parties, including comments offered at the XXII Antarctic Treaty Consultative Meeting in 1998. Following the final response from the operator, the EPA will inform the operator if EPA, with the concurrence of the National Science Foundation, makes the finding that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. This notification will occur within fifteen (15) days of submittal of the final CEE by the operator if the final CEE is submitted by the operator within the time limits set out in this section. If no final CEE is submitted or the operator fails to meet these time limits, EPA will provide such notification sixty (60) days prior to departure of the expedition. If EPA does not provide such notice, the operator will be deemed to have met the requirements of this part provided that procedures, which include appropriate monitoring, are put in place to assess and verify the impact of the activity. The EPA will transmit the CEE, along with a notice of any decisions by the operator relating thereto, to the Department of State which shall circulate it to all Parties no later than sixty (60) days before commencement of the proposed activity in the Antarctic Treaty area. The EPA will also publish a notice of availability of the final CEE in the **Federal Register**.

(3) No final decision shall be taken to proceed with any activity for which a CEE is prepared unless there has been an opportunity for consideration of the draft CEE by the Antarctic Treaty Consultative Meeting on the advice of the Committee for Environmental Protection, provided that no expedition need be delayed through the operation of paragraph 5 of Article 3 to Annex I of the Protocol for longer than 15 months from the date of circulation of the draft CEE.

(c) *Decisions based on CEE.* The decision to proceed, based on environmental documentation that meets the requirements under Article 8 and Annex I to the Protocol and the provisions of this part, rests with the operator. Any decision by an operator on whether to proceed with or modify a proposed activity for which a CEE was required shall be based on the CEE and other relevant considerations.

§ 8.9 Measures to assess and verify environmental impacts.

(a) The operator shall conduct appropriate monitoring of key environmental indicators as proposed in the CEE to assess and verify the potential environmental impacts of

activities which are the subject of a CEE. The operator may also need to carry out monitoring in order to assess and verify the impact of an activity for which an IEE has been prepared.

(b) All proposed activities for which an IEE or CEE has been prepared shall include procedures designed to provide a regular and verifiable record of the impacts of these activities, in order, *inter alia*, to:

(1) Enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and

(2) Provide information useful for minimizing and mitigating those impacts, and, where appropriate, information on the need for suspension, cancellation, or modification of the activity.

§ 8.10 Cases of emergency.

This part shall not apply to activities taken in cases of emergency relating to the safety of human life or of ships, aircraft, equipment and facilities of high value, or the protection of the environment, which require an activity to be undertaken without completion of the procedures set out in this part. Notice of any such activities which would have otherwise required the preparation of a CEE shall be provided within fifteen (15) days to the Department of State, as provided below, for circulation to all Parties to the Protocol and to the Committee on Environmental Protection, and a full explanation of the activities carried out shall be provided within forty-five (45) days of those activities. Notification shall be provided to: The Director, The Office of Oceans Affairs, OES/OA, Room 5805, Department of State, 2201 C Street, NW, Washington, DC 20520–7818.

§ 8.11 Prohibited acts, enforcement and penalties.

(a) It shall be unlawful for any operator to violate this part.

(b) An operator who violates any of this part is subject to enforcement, which may include civil and criminal enforcement proceedings, and penalties, pursuant to sections 7, 8, and 9 of the Antarctic Conservation Act, as amended by the Act; 16 U.S.C. 2407, 2408, 2409, and 45 CFR part 672.

§ 8.12 Coordination of reviews from other Parties.

(a) Upon receipt of a draft CEE from another Party, the Department of State shall publish notice in the **Federal Register** and shall circulate a copy of the CEE to all interested federal agencies. The Department of State shall coordinate responses from federal

agencies to the CEE and shall transmit the coordinated response to the Party which has circulated the CEE. The Department of State shall make a copy of the CEE available upon request to the public.

(b) Upon receipt of the annual list of IEEs from another Party prepared in accordance with Article 2 of Annex I and any decisions taken in consequence thereof, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy of the list of IEEs prepared in accordance with Article 2 and any

decisions taken in consequence thereof available upon request to the public.

(c) Upon receipt of a description of appropriate national procedures for environmental impact statements from another Party, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy of these descriptions available upon request to the public.

(d) Upon receipt from another Party of significant information obtained, and any action taken in consequence therefrom from procedures put in place

with regard to monitoring pursuant to Articles 2(2) and 5 of Annex I to the Protocol, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy of this information available upon request to the public.

(e) Upon receipt from another Party of a final CEE, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy available upon request to the public.

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