

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 8

[FRL-7004-9]

### Environmental Impact Assessment of Nongovernmental Activities in Antarctica

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Public Law 104-227, the Antarctic Science, Tourism, and Conservation Act of 1996 (the Act), amends the Antarctic Conservation Act of 1978 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 proposed rule would establish requirements for assessments and coordination.

**DATES:** Comments must be received on or before July 30, 2001.

**ADDRESSES:** Send written comments to Mr. Joseph Montgomery, Director, NEPA Compliance Division; Office of Federal Activities (2252A); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Montgomery or Ms. Katherine Biggs at telephone: (202) 564-7157 or (202) 564-7144, respectively.

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

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## 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

Although the Act gave the Environmental Protection Agency (EPA) two years to promulgate regulations, the United States (U.S.) sought immediate ratification of the Protocol which, in turn, required EPA, contemporaneous with ratification, to have regulations in effect which enabled the U.S. to comply with its obligations under the Protocol. Accordingly, on April 30, 1997, EPA promulgated an interim final rule so that the United States could ratify the

Protocol and implement its obligations under the Protocol as soon as the Protocol entered into force.

Because of the importance of facilitating the Protocol's prompt entry into force, EPA believed it had 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. Therefore, the interim final regulations were issued without notice and an opportunity to comment and, for the same reasons, under 5 U.S.C. 553(d)(3), the interim final regulations took effect on April 30, 1997.

Further, EPA believed that public comment on the requirements for environmental documentation, including procedures and content, in the interim final regulations was unnecessary because the interim final regulations incorporated 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 1992. Specifically, language from the Protocol was incorporated into the 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 the interim final regulations were set out to meet those established by Annex I to the Protocol.

At the time the interim final regulations were promulgated, EPA announced its plans to provide extensive opportunities for public comment in the development of the proposed final regulations. EPA stated the final regulations would be proposed and promulgated in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*), which generally requires notice to the public, description of the substance of the proposed rule and an opportunity for public comment. Further, EPA announced that it would prepare under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) an Environmental Impact Statement (EIS), which would consider the environmental impacts of the proposed rule and alternatives and which would address the environmental and regulatory issues raised by interested agencies, organizations, groups and individuals and that the public would have an opportunity to participate in the scoping process for the EIS. The Notice of Availability for the "Draft Environmental Impact Statement for the Proposed Rule on Environmental Impact

Assessment of Nongovernmental Activities in Antarctica" (DEIS) was published in the **Federal Register** on February 16, 2001; the public comment period closed on April 2, 2001. In preparing this proposed rule, EPA has considered the comments received on the issues involved with and the alternatives presented in the DEIS for this regulatory action.

The interim final regulations were intended to be limited in time and effect to provide for a transition period until the final regulations could be developed prior to the statutory deadline of October 2, 1998. However, during scoping, the International Association of Antarctica Tour Operators, individual tour operators, and The Antarctica Project/Antarctic and Southern Ocean Coalition requested that the deadline for the interim final rule be extended to give the operators an opportunity to determine the "workability" of the requirements and then to comment to EPA. After consultation with other interested federal agencies, EPA determined that this request was reasonable and that additional time to develop the final rule would be beneficial. Thus, EPA issued a direct amendment to the interim final rule effective July 14, 1998, which extended its applicability through the 2000–2001 austral summer. The interim final regulations served as the model for these proposed regulations which are described below. Certain aspects of these proposed regulations are new or different from the interim final regulations, including a new provision that would allow submission of environmental documentation on a multi-year basis and a definition of the term "more than a minor or transitory impact."

## II. Description of Program and These Proposed 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 that may arise, and freezes territorial claims. Currently 27 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 Proposed Regulations

The purpose of these proposed regulations is to provide for the evaluation of the potential environmental impact 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. The Treaty requires notice of, *inter alia*, "all expeditions to Antarctica organized in or proceeding from" the United States. In addition, these regulations would provide for coordination of reviews of draft CEEs received from other Parties, in accordance with the Protocol. The Act states that these regulations are to

be consistent with Annex I to the Protocol.

Among other things, these proposed regulations specify the procedures that would need to 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 proposed regulations include considerations and elements relevant to environmental documentation of the evaluation, as well as procedures for submission of environmental documentation that would allow the EPA to review whether the evaluation meets the provisions of the proposed regulations and the requirements of Annex I of the Protocol.

Operators currently provide information prior to each Antarctic summer season 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 Section 8.4(a) of these proposed regulations. While operators would be required to include this information in environmental documentation, they could also continue to provide this information directly to the Department of State.

### C. Summary of the Protocol

This proposed rule would implement 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 would need to be submitted under these proposed regulations before the activity proceeds. For an activity that will have no more than a minor or transitory impact, an initial environmental evaluation (IEE) would need to be submitted under these proposed 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) would need to be submitted under these proposed 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 Proposed Regulations*

##### **1. Persons Required To Carry Out an EIA**

The requirements of these proposed regulations would 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 proposed regulations would 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 proposed regulations would include trips by yachts, skiing or mountaineering expeditions, privately funded research expeditions, and other nongovernmental or nongovernment-sponsored activities.

These proposed regulations would 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 proposed 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 proposed regulations would 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 approach, these

proposed 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 proposed 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 proposed 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 would 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 proposed regulations.

##### **3. Appropriate Level of Environmental Documentation**

(a) *Preliminary Environmental Review Memorandum (PERM)*. These proposed regulations provide that an operator who asserts that an expedition will have less than a minor or transitory impact would 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, would 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 would provide its comments to the operator within fifteen (15) days of receipt of the PERM, and the operator would 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 regulations. This finding would be made with the concurrence of the National Science Foundation. If EPA does not provide such notice within thirty (30) days, the operator would be deemed to have met the requirements of these proposed regulations.

If EPA recommends an IEE and one is prepared and submitted within the seventy-five (75) day response period, the schedule for review would follow the time frames set out for an IEE in these 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 that 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, which has been confirmed by its experience under the interim final regulations, that, at a 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 proposed 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.

Any operator who wishes to make an expedition to Antarctica would be 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 regulations that the PERM fails to meet the requirements under Annex I to the Protocol and the provisions of these proposed regulations.

The EPA would provide its comments to the operator within thirty (30) days of receipt of the IEE, and the operator would 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 regulations. This finding would be made with the concurrence of the National Science Foundation. If such a notice is required, EPA would 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 would be deemed to have met the requirements of these proposed 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, would consult with the operator regarding possible changes in the

proposed activity that would allow preparation of an IEE.

The EPA, upon receipt of an IEE, would electronically publish notice of its receipt on the Office of Federal Activities' World Wide Web Site: <http://www.epa.gov/oeca/ofa/>. The Department of State would 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 of Annex I of the Protocol and any decisions taken in consequence thereof. Any IEE prepared in accordance with these regulations would 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 anticipated to be in July 2001, CEEs prepared for nongovernmental activities in the 2001-2002 season would have to have been distributed by March 2001. Operators who are anticipating activities for the 2002-2003 season which would require a CEE are encouraged to consult with the EPA as soon as possible.

In order to meet the requirements of Article 3(4), of Annex I of the Protocol which 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, and because the ATCM generally meets in May, the schedule in the proposed regulations for submitting a draft CEE is the preceding November in order to ensure time for its distribution to all Parties and the Committee 120 days in advance of the ATCM. Thus, for example, for the 2002-2003 season, any operator who plans an activity which would require a CEE would need to submit a draft of the CEE to EPA by December 1, 2001. Within fifteen (15) days of receipt of the draft CEE, EPA would send it to the Department of State for transmittal as a draft CEE to other Parties and EPA would publish notice of receipt of the CEE in the **Federal Register** and would provide copies to any person upon request. The EPA would accept public comments on the CEE for a period of ninety (90) days following notice in the **Federal Register**. The EPA would make these public comments available to the operator.

The EPA, in consultation with other interested federal agencies, would review the CEE to determine if it meets the requirements under Annex I to the Protocol and the provisions of these

proposed 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 would need to prepare a final CEE that addresses and includes or summarizes any comments on the draft CEE received from EPA, the public and the Parties. The final CEE would need to be sent to EPA at least seventy-five (75) days before proposed departure. Following the final response from the operator, the EPA would 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 regulations. This notification would 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 regulations. If no final CEE is submitted by the operator, or if the operator fails to meet these time limits, EPA would 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 regulations, the operator would be 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 would be deemed to have met the requirements of these regulations provided that procedures, which include appropriate monitoring, are carried out to assess and verify the impact of the activity. The EPA would transmit the final CEE to the Department of State which would 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 would 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 would be required for a proposed expedition.

(d) *Mitigation*. If an operator chooses to mitigate and the mitigation measures are the basis for the level of environmental documentation, EPA would assume the operator would proceed with these mitigation measures. Otherwise, the documentation may not have met the requirements of Article 8

and Annex I and the provisions of these proposed regulations.

#### 4. Criteria for a CEE

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 would 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 that 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 that 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 would 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 proposed regulations as is used in determining if a federal activity will have a significant effect for purposes of the National Environmental Policy Act (NEPA). See 40 CFR 1508.27. For this reason, for purposes of these proposed regulations and consistent with the environmental impact assessment regulations for federal activities, the term "more than a minor or transitory impact" has been defined to have the same meaning as the term "significantly" under NEPA. 16 U.S.C. 2403a(1)(B); 40 CFR 1508.27.

The recommendation to add this definition to these proposed regulations was made to EPA during the scoping process and was considered in the DEIS

prepared by EPA that considered the alternatives for this proposed rule. The Agency is interested in receiving comments on this definition in these proposed regulations.

#### 5. Measures To Assess and Verify Environmental Impacts

The Protocol and these proposed regulations require an operator to employ procedures to assess and provide a regular and verifiable record of the actual impacts of any activity that proceeds on the basis of an IEE or CEE. The record developed through these measures would need to 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 would need to 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; the 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 a description of any activity requiring mitigation, the mitigative actions undertaken, and the actual or projected outcome of the mitigation.

These proposed regulations do not set out detailed monitoring procedures for activities requiring a CEE because the Parties are still working to identify monitoring approaches that 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 would consult with the National Science Foundation and other interested federal agencies regarding this monitoring regime.

*E. Incorporation of Information, Consolidation of Environmental Documentation, Waiver or Modification of Deadlines, and Provision for Multi-Year Environmental Documentation*

The EPA is strongly committed to minimizing unnecessary paperwork and to implementation of these proposed 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 proposed regulations, and, provided that the environmental documentation is appropriate in light of the specific circumstances of each operator's expedition or expeditions, the EPA would 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 that are applicable to some or all of the proposed expeditions; (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 proposed regulations; and (4) one environmental document may be submitted by one or more operators for proposed expeditions for a period of up to five consecutive austral summer seasons, provided that the conditions of the multi-year environmental document, including the assessment of cumulative impacts, are unchanged. The multi-year provision would also allow operators to update basic information and to provide information on additional activities to supplement the multi-year environmental document without having to revise and re-submit the entire

document. Further, the EPA may waive or modify the deadlines of these proposed regulations 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.

The multi-year documentation provision was recommended to EPA during the scoping process and was considered in the EIS prepared by EPA that considered the alternatives for this proposed rule. The Agency is interested in receiving comments on this provision in these proposed regulations.

*F. Submission of Environmental Documents*

The operator would need to 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, Director, NEPA Compliance Division—Mail Code 2252A, 1200 Pennsylvania Avenue, NW., 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, Director, NEPA Compliance Division—Room 7239A, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20044.

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

*G. Prohibited Acts, Enforcement and Penalties*

It would be unlawful for any operator to violate these proposed regulations. An operator who violates any of these regulations would be 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.

*H. Provision for Categorical Exclusions*

The National Environmental Policy Act defines "categorical exclusion" as "a category of actions which do not

individually or cumulatively have a significant effect on the human environment \* \* \* and for which, therefore, neither an environmental assessment nor an environmental impact statement is required" (40 CFR 1508.4). Only narrow and specific classes of activities can be categorically excluded from environmental review. For example, EPA in its NEPA regulations at 40 CFR 6.107(d) excludes "\* \* \* actions which are solely directed toward minor rehabilitation of existing facilities \* \* \*" and the National Science Foundation in its environmental assessment regulations at 45 CFR part 641(c)(1) and (2) excludes certain scientific activities (e.g., use of weather/research balloons that are to be retrieved) and interior remodeling and renovation of existing facilities. The DEIS considered a modification that would add a provision for categorical exclusion. The DEIS noted that the International Association of Antarctica Tour Operators (IAATO) recommended that Antarctic ship-based tourism organized under the "Lindblad Model" be categorically excluded. However, EPA does not have a specific definition for the "Lindblad Model." EPA also believes that a broad categorical exclusion covering ship-based tourism as now conducted does not fit well with the approach used by the U.S. government for categorical exclusions because it does not identify actions to be excluded in sufficient detail. Further, more needs to be known about potential cumulative impacts of nongovernmental activities undertaken by U.S.-based ship-based tour operators before deciding to exclude some or all of these specific activities. EPA is, however, interested in receiving comments on specific activities that the Agency should consider including as categorical exclusions in the final rule including the justification for this proposed designation. It should also be noted that even if EPA does not designate categorical exclusions in the final rule, these can be designated by amendment to the rule if categorical exclusion activities are identified in the future.

**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 proposed 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 would publish notice of receipt in the **Federal Register** and would circulate a copy of the CEE to all interested federal agencies. The Department of State would coordinate responses from federal agencies to the CEE and would transmit the coordinated response, if any, to the Party that has circulated the CEE. The Department of State would make a copy of the CEE available upon request to the public. Members of the U.S. public would 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 would circulate a copy to all interested federal agencies. The Department of State would 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 would circulate a copy to all interested federal agencies. The Department of State would 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 would circulate a copy to all interested federal agencies. The Department of State would 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 would circulate a copy to all interested federal agencies. The Department of

State would make a copy available upon request to the public.

#### **IV. Executive Order 12866 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 rule is a "significant regulatory action." Although none of the first three criteria apply, this rule raises novel legal or policy issues arising out of legal mandates under Public Law 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 (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, 5 U.S.C. 601 et seq.)**

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business

Administration with the North American Industry Classification System (NAICS) code for "Tour Operators" (NAICS code 561520) with annual maximum receipts of \$5.0 million (13 CFR part 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Note that under the Antarctic Science, Tourism, and Conservation Act of 1996, governmental jurisdictions are not subject to this rulemaking.

For purposes of assessing the potential impacts of the proposed rule on small entities, EPA assessed the potential impacts the proposed rule may have on the U.S.-based operators regulated under the interim final rule, that is, those for which the United States provided advance notice under Paragraph 5 of Article VII of the Treaty for proposed nongovernmental expeditions organized in or proceeding from the U.S. to the Antarctic Treaty area during the austral summer season 2000-2001, and other U.S.-based operators included in such documentation. The screening assessment indicated that of the twelve operators, four would qualify as small entities under the Small Business Administration definition. EPA has estimated that these small entities have annual operating expenditures (small organization) or annual sales (small business) ranging from about \$100,000 to about \$4,600,000. Based on costs estimated under the interim final rule, EPA estimated the potential impact on these small entities to range from an average of about \$1,400 to about \$4,200 for the 5-year period a multi-year environmental document could be in effect; this represents an impact in the range of less than 1% to about 1.4%. Even if the small entities did not take advantage of the additional cost-saving alternative provided in the multi-year provision of the proposed rule, the impact of the proposed rule would range from an average of about \$2,300 to \$6,800 for the same 5-year period. Of the four small entities subject to today's proposed rule, only one may be impacted significantly. Therefore, this proposed rule will not impact a substantial number of small entities. Moreover, the potential impact in that small entity arguably is not significant. In addition, as discussed below, EPA included in both the interim final rule and today's proposed rule cost-saving

alternatives that are available to all operators, including small operators. Under the interim final rule, all operators made use of the cost-saving alternatives and EPA expects them to continue using these alternatives and the additional alternative included in today's rule.

Therefore, after considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The EPA believes that because this proposed rule only requires assessment of environmental impacts the effects on any small entities 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. The costs are likely to be minimal because it is EPA's view that the types of activities 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. Therefore, most activities will likely need only IEE documentation, the cost of which is minimal as shown in section VII, Paperwork Reduction Act. Further, as in the interim final rule, EPA has included provisions in this proposed rule which are available to all respondents, including small entities, which will have a positive effect by minimizing the cost of such an analysis. It has been EPA's experience that respondents used the cost reduction provisions in the interim final regulations. EPA anticipates that

respondents will continue to use these provisions and the new provision that would allow submission of environmental documentation on a multi-year basis. The cost reduction provisions in this proposed rule include: (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; (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 regulations; and (4) one environmental document may be submitted by one or more operators for proposed expeditions for a period of up to five consecutive austral summer seasons, provided that the conditions of the multi-year environmental document, including the assessment of cumulative impacts, are unchanged. The multi-year provision would also allow operators to update basic information and to provide information on additional activities to supplement the multi-year environmental document without having to revise and re-submit the entire document. Further, the EPA may waive or modify the deadlines of these regulations 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. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### **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. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit

analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations. These regulations are necessary so that the United States will have the ability to implement its obligations under the Protocol on Environmental Protection to the Antarctic Treaty of 1959. Further, the UMRA excludes from the definitions of "Federal intergovernmental mandate" and "Federal private sector mandate" duties that arise from conditions of federal assistance. Governmental jurisdictions including Federal, State, local and tribal governments and private sector operators receiving financial assistance from the United States government, are not subject to this rulemaking. In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal

governments, in the aggregate, or the private sector in any one year. For the private sector, there are currently less than 20 regulated operators and, because of the nature of business and the Antarctic location, this number is not expected to increase significantly. Moreover, this proposed rule provides alternatives that may be used by operators to reduce the burden and costs associated with the proposed rule. Expenditures for nongovernmental operators can be minimized through provisions in the rule that provide for the following approaches to submission of the environmental documentation required under the rule: (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; (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 regulations; and (4) one environmental document may be submitted by one or more operators for proposed expeditions for a period of up to five consecutive austral summer seasons, provided that the conditions of the multi-year environmental document, including the assessment of cumulative impacts, are unchanged. The multi-year provision would also allow operators to update basic information and to provide information on additional activities to supplement the multi-year environmental document without having to revise and re-submit the entire document. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments under section 203 of the UMRA. Governmental jurisdictions are not subject to this rulemaking.

#### VII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2020-0007) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at [farmer.sandy@epamail.epa.gov](mailto:farmer.sandy@epamail.epa.gov), or by calling (202)260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>.

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 provisions of the Protocol on Environmental Protection to the Antarctic Treaty of 1959. The Act provides that EPA must 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 for coordination of the review of information regarding environmental impact assessment received from other Parties under the Protocol. This proposed 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 would be 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 regulations, the operator would have no further obligations pursuant to the applicable requirements of these proposed 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. Nongovernmental operators would be able to use the following approaches for submission of the environmental documentation required under the proposed rule: (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; (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 regulations; and (4) one environmental document may be submitted by one or more operators for proposed expeditions for a period of up to five consecutive austral summer seasons, provided that the conditions of the multi-year environmental document, including the assessment of cumulative impacts, are unchanged. The multi-year provision would also allow operators to update basic information and to provide information on additional activities to supplement the multi-year environmental document without having to revise and re-submit the entire document. EPA anticipates that operators will make one submittal per year for all of their expeditions for that year and that most operators will be able to use the multi-year environmental documentation provision. EPA does not expect or anticipate receipt of any confidential information. 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:* 13 to 14.

*Estimated Average Time Per*

*Respondent:* 29 to 185 Hours depending on the anticipated level of environmental documentation and the paperwork reduction provisions employed by the respondent.

*Total Annual Burden Hours:* 377 to 562 Hours depending on the anticipated level of environmental documentation and the paperwork reduction provisions employed by the respondent.

*Estimated Average Cost Per Respondent to Prepare and Submit Environmental Documentation for the First Year:* \$2,668 to \$13,405 depending on the anticipated level of

environmental documentation and the paperwork reduction provisions employed by the respondent.

*Estimated Average Cost Per Respondent to Prepare and Submit Environmental Documentation for Subsequent Years:* \$1,844 to \$14,117 depending on the anticipated level of environmental documentation and the paperwork reduction provisions employed by the respondent.

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.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 29, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by July 30, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### **VIII. National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, Section 12(d) (15 U.S.C. 272 note)**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### **IX. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 56 FR 7629 (1994), requires each Federal agency, to the greatest extent practicable and permitted by law, to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority or low-income populations, including Indian tribes in the United States and its territories and possessions. The provisions of Executive Order 12898 do not apply to this regulatory action, which relates to environmental impacts of nongovernmental activities in the sovereignless continent of Antarctica.

#### **X. Executive Order 13132, Federalism**

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Governmental jurisdictions including Federal, State, local and tribal governments and private sector operators receiving financial assistance from the United States government, are not subject to this rulemaking. Further, the regulatory responsibilities of the EPA under this rule cannot be delegated to or otherwise made the responsibility of the States. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials. By publishing and inviting comment on this proposed rule, EPA hereby is providing State and local officials notice and an opportunity for appropriate participation.

#### **XI. Executive Order 13175, Tribal Consultation**

Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this proposed rule, however, during the period when Executive Order 13084 was in effect. Thus, EPA addressed tribal considerations under Executive Order 13084. EPA will analyze and fully comply with the requirements of Executive Order 13175 before promulgating the final rule.

#### **XII. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks**

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

#### List of Subjects in 40 CFR Part 8

Environmental protection, Antarctica, Environmental impact statements, Penalties, Reporting and recordkeeping requirements.

Dated: June 22, 2001.

Christine Todd Whitman,  
Administrator.

Therefore, for the reasons set forth in the Preamble, EPA proposes to amend title 40 chapter I of the Code of Federal Regulations by revising 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.*

#### § 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.

*More than a minor or transitory impact* has the same meaning as the term "significantly" as defined in regulations under the National Environmental Policy Act at 40 CFR 1508.27.

*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 § 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 § 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 § 8.8.)

(d) *Incorporation of information, consolidation of environmental documentation, and multi-year 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.

(e) *Multi-year environmental documentation.* (1) Provided that environmental documentation complies with all applicable provisions of Annex I to the Protocol and this part, an operator may submit environmental documentation for proposed expeditions for a period of up to five consecutive austral summer seasons, provided that the conditions of the multi-year environmental document, including the assessment of cumulative impacts, are unchanged and meets the provisions of paragraph (e)(1)(i) through (iii) of this section.

(i) The operator shall identify the environmental documentation submitted for multi-year documentation purposes in the first year it is submitted. If the operator, or operators, fail to make this initial identification to EPA, this provision shall not be in effect although subsequent years' submissions by the operator, or operators, may use this environmental documentation as provided in paragraph (d)(1) and (2) of this section.

(ii) In subsequent years, up to a total maximum of five years, the operator, or operators, shall reference the multi-year documentation identified initially if it is necessary to update the basic information requirements listed in paragraph (a) of this section.

(iii) An operator, or operators, may supplement a multi-year environmental document for an additional activity or activities by providing information regarding the proposed activity in accordance with the appropriate provisions of this part. The operator, or operators, shall identify this submission as a proposed supplement to the multi-year documentation in effect. Addition of the supplemental information shall not extend the period of the multi-year environmental documentation beyond the time period associated with the documentation as originally submitted.

(2) Multi-year environmental documentation may include more than one proposed expedition within the environmental document and the multi-year 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.

(3) The schedules for multi-year environmental documentation depend on the level of the environmental document and shall be the same as the schedules for comparable environmental documentation submitted on an annual basis; e.g., a multi-year PERM shall comply with the schedule in § 8.6, a multi-year IEE shall comply with the schedule in § 8.7, and a multi-year CEE shall comply with the schedule in § 8.8. These schedules apply to the operator's submission of the initial multi-year environmental document; the operator's subsequent annual submissions pursuant to paragraph (e)(1)(ii) and (iii) of this section; EPA's review, in consultation with other interested federal agencies, and comment on the multi-year environmental documentation and subsequent annual submissions; and a finding the EPA may make, with the concurrence of the National Science Foundation, 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.

#### **§ 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) Any operator who plans a nongovernmental expedition that would require a CEE must submit a draft of the CEE by December 1 of the preceding year. 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 address and must include (or summarize) any comments on the draft CEE received from EPA, the public, and the Parties. 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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