

Environmental Protection Agency

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activity on the Antarctic environment prepared in accordance with § 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 § 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 described in the multi-year environmental document, including the assessment of cumulative impacts, are unchanged and meets the provisions of paragraphs (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 paragraphs (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 paragraphs (e)(1) (ii) and (iii) of

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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.