

**PART D OF THE SUPPORTING STATEMENT
SUMMARY OF CONSULTATIONS WITH
INTERESTED AGENCIES AND AFFECTED RESPONDENTS**

Summary of Consultations with Interested Agencies

As stated in Section 5(a) of the Supporting Statement, EPA consults with the Department of State, the National Science Foundation, and other interested Federal agencies¹ for activities associated with the Final Rule. This enables appropriate government agencies with specific Antarctic interests and expertise to be involved with the review of the environmental documentation for proposed nongovernmental expeditions including coordination of appropriate information relative to the U.S. Antarctic Program. Further, violation of the provisions of the Final Rule could result in enforcement and penalties pursuant to the Antarctic Conservation Act, as amended, as undertaken by the National Science Foundation and/or the Department of Justice. Finally, the Department of State has specific responsibilities under the Final Rule, Section 8.12, Coordination of reviews from other Parties, and for circulating a CEE that is prepared in accordance with the Final Rule at Section 8.8, along with any decisions by the operator relating thereto, to all Parties.

U.S. Department of State:

EPA's regulations at 40 CFR Part 8, state that EPA, in consultation with other interested Federal agencies, will carry out a review of the environmental documentation submitted by an operator (e.g., respondent) to determine if the submitted document meets the requirements of Article 8 and Annex I of the Protocol and the provisions of the Final Rule. (Also see: Section 1(b) of the Supporting Statement.) As stated in Section 3(a) of the Supporting Statement, the information that is requested from respondents under this ICR is required by statute and is not available from other sources. Operators provide an advance notice to the U.S. Department of State. This information is similar to the basic information requirements for preparation of environmental documentation under the Final Rule. Operators can include a copy of the advance notice as part of their environmental document. Alternately, under the paperwork reduction provisions of the Final Rule, operators could choose to incorporate the advance notice by referring to it since it is reasonably available to EPA. Practice has been that the operators have included a copy in their environmental assessment documentation. If submitted by the operator or provided by the Department of State, EPA reviews the advance notification in coordination with the State Department and other interested Federal agencies as part of its review of the operator's environmental document.

As stated in Section 1(b) of the Supporting Statement, in cases of emergency relating to the safety of human life or of ships, aircraft, equipment and facilities of high value, or the

¹EPA routinely consults with the Department of State (DOS) and the National Science Foundation (NSF). EPA may consult with other agencies when appropriate for specific activities. These may include: U.S. Coast Guard (USCG), Marine Mammal Commission (MMC), National Oceanic and Atmospheric Administration (NOAA, including National Marine Fisheries Service), and the Department of Justice (DOJ).

protection of the environment which would require an activity to be undertaken without completion of the documentation procedures set out in the Final Rule, the operator would need to notify the Department of State within 15 days of any activities which would have otherwise required preparation of a CEE, and provide a full explanation of the activities carried out within 45 days of those activities. (See: 40 CFR 8.10, Cases of emergency.)

As stated in Section 1(b) of the Supporting Statement, the Final Rule also provides for the coordination of review of information received from other Parties and the public availability of that information including: (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. This provision fulfills the United States' obligation to meet the requirements of Article 6 of Annex I to the Protocol. The Department of State is responsible for coordination of these reviews of drafts with interested Federal agencies, and for public availability of documents and information. This portion of the Final Rule does not impose paperwork requirements on any nongovernmental person subject to U.S. regulation. (See: 40 CFR 8.12, Coordination of reviews from other Parties.) The Department of State is also responsible for circulating a CEE that is prepared by a U.S. operator in accordance with 40 CFR 8.8, along with any decisions by the operator, to all Parties.

The Department of State was a member of EPA's Regulation Development Workgroups for both the Interim Final and Final Rules and agreed to the requirements stated in 40 CFR 8.8, 40 CFR 8.10 and 40 CFR 8.12. The Department of State continues to fulfill these responsibilities. EPA also continues to consult with the Department of State in carrying out reviews of operators' environmental document submissions. As part of the ICR renewal process, OFA informally consulted with Mr. Fabio Saturni, Department of State, and reconfirmed these responsibilities and consultation interests, and the model used for determining the Federal Government's hour and cost burdens.

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2201 C Street, NW
Washington, DC 20520
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National Science Foundation:

EPA's regulations at 40 CFR Part 8, state that EPA, in consultation with other interested Federal agencies, will carry out a review of the environmental documentation submitted by an operator (e.g., respondent) to determine if the submitted document meets the requirements of Article 8 and Annex I of the Protocol and the provisions of the Final Rule. (Also see: Section 1(b) of the Supporting Statement.) The National Science Foundation (NSF) manages the U.S.

Government's Antarctic Program. EPA's consultations with NSF include issues of technical expertise and assurance that similar procedures are being used for assessing both governmental and nongovernmental activities in Antarctica. Consistent with this approach, EPA's 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. (See: Preamble to EPA's Final Rule, III.D.2.)

Operators may be required to have a permit for management of certain materials and/or for certain activities undertaken in Antarctica. These permits are issued by the National Science Foundation independent of EPA's regulations. When a permit is required, the operator usually states in the environmental document for the expedition that a permit has been applied for or received. Receipt of the permit is considered by EPA to provide for the mitigation measures for the activities described in the operator's environmental document that are subject to the permit. EPA reviews permit applications in coordination with the National Science Foundation and other interested Federal agencies as part of its review of an operator's environmental document. Independent of the environmental document, EPA may also submit comments to NSF on the permit application.

As stated in Sections 1(b) and 4(b) of the Supporting Statement, the Protocol and the Final Rule require an operator to employ procedures to assess and provide a regular and verifiable record of the actual impacts of an activity which proceeds on the basis of an IEE or CEE. 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. For activities that require a CEE, OFA would consult with the National Science Foundation and other interested Federal agencies regarding the monitoring regime that would be appropriate to the activity proposed, and with regard to possible utilization of relevant monitoring data collected by the U.S. Antarctic Program.

As stated in Section 2(b) of the Supporting Statement, 40 CFR 8.9(b) requires that operators have procedures designed to provide a regular and verifiable record of the impacts of these activities. For activities requiring an IEE, an operator should be able to use procedures that are voluntarily utilized by operators to provide the required information. The operators currently provide post-visit reports to Antarctic Treaty Parties. Currently, the National Science Foundation receives the information voluntarily submitted by the tour operators and, in cooperation with the International Association of Antarctica Tour Operators (IAATO), uses the information to prepare annual summary reports. EPA assumes this voluntary process of post-visit reporting will continue.

As stated in Section 3(a) of the Supporting Statement, most Antarctica tour operators currently provide, on an informal basis, information to the National Science Foundation. Prior to each Antarctic season, such information may include ship schedules and contact information, and following the season, the post-trip reports noted above.

As stated in Section 5(a) of the Supporting Statement, violation of the provisions of 40 CFR Part 8 could result in enforcement and penalties pursuant to the Antarctic Conservation Act, as amended, as undertaken by the National Science Foundation and/or the Department of Justice. EPA would consult with, and may make a referral to, NSF if an alleged violation of the regulations occurred.

The National Science Foundation was a member of EPA's Regulation Development Workgroups for both the Interim Final and Final Rules and agreed to the consultation and enforcement requirements stated in the regulations. The National Science Foundation continues to fulfill these responsibilities including consultation during reviews of operators' environmental documents. As part of the ICR renewal process, OFA informally consulted with Dr. Polly Penhale, National Science Foundation, and reconfirmed these responsibilities and consultation interests, and the model used for determining the Federal Government's hour and cost burdens.

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Summary of Consultations with Affected Respondents

As part of the ICR renewal process, OFA informally consulted seven of the operators (e.g., respondents) that operate annually in Antarctica in order to gather feedback on the models used in the Supporting Statement and the hour and cost burden estimates. Based on EPA's experience during the seven austral summer seasons the Rule has been in effect, respondents operating annually have included one privately funded researcher, two land-based (e.g., continental) operators, and the remainder have been ship-based tour operators with expeditions in the Ross Sea and/or the Peninsula Area. Feedback was sought from a cross-section of these respondents.

OFA explained to each operator that the purpose of the informal consultation was to seek operator input regarding the document models in the ICR Supporting Statement and the hour and cost burden estimates. In all cases, it was explained that the Supporting Statement addresses all three levels of environmental documentation (e.g., PERM, IEE and CEE). All agreed that the IEE should be the focus of the discussion since this is the level of documentation operators usually submit.² OFA explained the three IEE models developed for the burden estimates: (1) a "core IEE" which is the initial IEE submission; (2) a "revised IEE" which is a revision of the "core IEE" to address items such as assessment of new or modifications of planned activities; and (3) a "Multi-Year IEE" which may be submitted for a period of up to five consecutive austral summer seasons and consists of a "core IEE," or usually a "revised IEE," submitted in the

²To date, only one one-time only operator submitted a PERM and no CEEs have been submitted. Most operators with annual expeditions have submitted, or are in the process of submitting, a multi-year IEE.

first year with supplemental information submitted in the subsequent four years. The supplemental information may include annual update of the basic information and also identification and assessment of an additional activity or activities. (For multi-year environmental documentation, see: 40 CFR 8.4(e)). The hour and cost burden estimates used in the informal consultations were taken from Exhibit 3 of the Supporting Statement, "Estimated Respondent/Federal Government Burden and Cost," in the draft ICR Supporting Statement that is available in EPA's Docket, ID number OECA-2004-0026 (see: Section 3(b) of the Supporting Statement). The IEE models and the burden estimates used in the discussions were as follows:

<u>IEE Model</u>	<u>Hours</u>	<u>On average cost</u>	<u>Estimated hourly rate</u>
Core IEE			185
			\$14,000
			\$76
Revised IEE			65
			\$
			5,000
			\$77
Subsequent Multi-Year IEE			25
			\$
			2,000
			\$80
			(E.g., \$75-80/hour)

In summary, all operators agreed with the following:

- \$ The environmental documentation process includes preparation of a PERM, IEE or CEE.
- \$ An IEE is the level of environmental documentation operators usually submit.
- \$ The three IEE models developed are appropriate for the burden estimates.
- \$ The hours estimated for the three IEE models are generally correct. More hours may be needed for an operator with less experience with the regulatory and other pertinent requirements, and less hours would likely be needed for an experienced operator. Also, the more an operator can incorporate by reference, the less time it takes to prepare the documentation, and the more operators included within one document, the less time it takes the operators individually to prepare the documentation.
- \$ The hourly rate used in the cost estimates for the three IEE models are generally correct.

Three of the respondents contacted said that documents were prepared in-house and that they do not track specific costs for this work but thought the estimates reasonable. One less experienced operator suggested the rate should be about \$100/hour; two highly experienced operators provided hourly rates of about \$65 and \$75/hour with one reporting that the going contractor rate in the business is \$50-75/hour.

Based on these consultations and the lack of any pertinent comment during the public comment period on the ICR, OFA revised Exhibits 1A through D in the Supporting Statement to lump the hours for the various activities for each document type (e.g., PERM, three IEE models, CEE) and calculated the estimated costs per hour over a range including \$65 as a low, \$75 as an intermediate, and \$100 as a high. The \$75/hour intermediate rate is used in Exhibit 1D for summary purposes.

The seven respondents contacted by OFA during the informal consultation process included one privately funded researcher, one land-based (e.g., continental) operator, and the remainder were ship-based tour operators with expeditions in the Ross Sea and/or the Peninsula Area. Of the five ship-based operators, three carry and land less than 200 passengers per voyage (which represents the majority of the ship-based operators), one carries and lands about 525 passengers per voyage, and one carries about 1,000 passengers on cruise-only, no landing voyages. Of these seven respondents, six are tour operators, and five of these six are members of the International Association of Antarctica Tour Operators (IAATO), which represents the majority of all Antarctic tour operators. The following identifies the operators contacted and summarizes the consultation discussion with each.

Privately funded researcher

Ron Naveen
Oceanites, Inc.
P.O. Box 15259
Chevy Chase, MD 20825
Telephone: 202/237-6262

Oceanites has a Multi-Year IEE which includes a "revised IEE" and submission of supplemental information for the annual updates.

Mr. Naveen agreed with the models, including the three IEE models, and generally agreed with the burden estimates. Mr. Naveen said the environmental documents are prepared in-house and that he does not track specific costs for this work. He thought the estimates seemed reasonable for a typical ship-based tour operator, though noted that for him the burden estimates were probably high because: (1) he incorporates a great deal of information by reference (see: 40 CFR 8.4(d)(1)), and (2) he knows EPA's regulations and the pertinent Antarctic references and information needed in the IEE so that it has been relatively easy for him to prepare the necessary IEE documentation for his expeditions.

Land-based operator

David Rootes
Antarctic Logistics & Explorations (ALE)
4376 S. 700 East, Suite 226
Salt Lake City, UT 84107-3006
Telephone: 801/266-4876
Alternate Telephone for Mr. Rootes in U.K.: 9-011-44-1954-718044

ALE is an IAATO member offering land-based expeditions in continental areas of Antarctica. ALE has a Multi-Year IEE which includes a "core IEE" and submission of supplemental information for the annual updates and new activities. Mr. Rootes is highly experienced with land-based and tour ship operations in Antarctica.

Mr. Rootes agreed with the models, including the three IEE models, and generally agreed with the burden estimates. He reported that ALE does contract work at a rate of \$500/day for an 8-hour day (which calculates to \$62.50/hour and is listed in the summary bullets as about \$65/hour). ALE may also be a sub-contractor under another contractor that may then charge \$600-700/day for an 8-hour day (which calculates to \$75 to \$87.50 per hour).

Ship-based operators

Denise Landau
IAATO
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Basalt, CO 81621
Telephone: 970/704-1047

IAATO-member operators with expeditions on ships that carry and land less than 200 passengers per voyage in the Peninsula Area have a Multi-Year IEE (see: 40 CFR 8.4(d)(2)). The "revised IEE" was prepared by Ms. Landau on behalf of these IAATO-member operators, and she also prepares certain of the supplemental information for the annual updates. The members operating under this IEE in a given year also submit expedition-specific supplemental information for the annual updates. Ms. Landau provides technical assistance to the member operators regarding their annual submissions.

Ms. Landau agreed with the models, including the three IEE models, and generally agreed with the burden estimates. She said that more hours may be needed for an operator with less experience with the regulatory and other pertinent requirements, and less hours would likely be needed for an experienced operator. Also, the more an operator can incorporate by reference, the less time it takes to prepare the documentation, and the more operators included within one document, the less time it takes on a per operator basis for the individual operators to prepare the documentation. (See: 40 CFR 8.4(d) and 8.4(e).)

Victoria Underwood-Wheatley
Abercrombie & Kent/Atholl Shipping Corporation (A&K/ASC)
1520 Kensington Road
Oak Brook, IL 60523
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A&K/ASC is an IAATO member that is included annually in the IAATO-member Multi-Year IEE as an operator with expeditions in the Peninsula Area. The "revised IEE" was prepared by Ms. Landau on behalf of these IAATO-member operators, and she also prepares certain of the supplemental information for the annual updates. As a member operating annually under this IEE, A&K/ASC also submits expedition-specific supplemental information for the annual updates. Ms. Underwood-Wheatley is highly experienced in Antarctic tour ship operations. As such, she has previously prepared "core IEEs." She also provides consulting services to other Antarctic tour operators.

Ms. Underwood-Wheatley agreed with the models, including the three IEE models, and generally agreed with the burden estimates. She said that the time needed to prepare the document is tied to how the ship will be used (e.g., the number and types of activities involved with the expedition). She also said that less hours would likely be needed for an experienced operator, and more hours may be needed for an operator with less experience as they would likely need more time to review the regulations and any other pertinent requirements, and then compile the materials and information needed in order to prepare the IEE. She said that the contractor rate for the business is in the range of \$50 to \$75/hour with highly experienced contractors receiving \$75/hour.

Susan Adie
Quark Expeditions
43 Willow Ave.
Middletown, RI 02842
Telephone: 401/847-1857

Quark is an IAATO member with ship-based expeditions that carry and land less than 200 passengers per voyage. Quark has two Multi-Year IEEs, one for its expeditions in the Ross Sea Area and the other for its multiple ship operations in the Peninsula Area. Both Multi-Year IEEs include a "revised IEE" and submission of supplemental information for the annual updates and new activities.

Ms. Adie agreed with the models, including the three IEE models, but thought that for her the burden estimates were probably low. She was recently made responsible for various environmental-related matters which, for her, includes items such as: submitting the Advance Notification, IEE documentation, and permit updates and renewals; consulting with IAATO regarding member requirements, operational procedures, and any new regulatory requirements; and time with customers on environmental-related issues. She did not attempt to break out the time specifically necessary for the IEE documentation process, but said that she thought the costs would likely be 1/4 to 1/3 more for her because she has less experience with the regulatory and other pertinent requirements. She said that for her, \$100/hour would be a more reasonable rate estimate.

Mr. Erland A.K. Fogelberg
Discovery World Cruises (DWC)
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Discovery World Cruises offers ship-based expeditions in the Peninsula Area that carry and land about 525 passengers per voyage. When DWC initially started offering Antarctic tours, the company submitted a "core IEE" and is now in the process of submitting a Multi-Year IEE that includes a "revised IEE" and will be followed by submission of supplemental information for the annual updates in subsequent years. Mr. Fogelberg was previously with Orient Lines and submitted the company's Multi-Year IEE and supplemental information for the annual updates. Orient Lines' vessel and operations are similar to DWC.

Mr. Fogelberg agreed with the models, including the three IEE models, and generally agreed with the burden estimates. He reported that DWC prepares the environmental documents in-house and that the company does not track specific costs for this work but thought the estimates reasonable. He indicated the same was the case when he was with Orient Lines.

Ms. Kelly Clark
Holland America Line, Inc. (HAL)
300 Elliott Avenue West
Seattle, WA 98119
Telephone: 206/286-3238

Holland America Line offers ship-based expeditions in the Peninsula Area on a vessel that carries about 1,000 passengers on cruise-only, no landing voyages. HAL has a Multi-Year IEE which includes a "revised IEE" and submission of supplemental information for the annual updates.

Ms. Clark agreed with the models, including the three IEE models, and generally agreed with the burden estimates. She reported that HAL prepares the environmental documents in-house and that the company does not track specific costs for this work. She thought that if this work were contracted out, the cost would likely be \$75 to \$100/hour though she had not checked this within the market.