

**TITLE 16 - CONSERVATION**  
**CHAPTER 44 - ANTARCTIC CONSERVATION**

**§ 2403a. Environmental impact assessment**

**(a) Federal activities**

- (1)** **(A)** The obligations of the United States under Article 8 of and Annex I to the Protocol shall be implemented by applying the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to proposals for Federal agency activities in Antarctica, as specified in this section.

**(B)** The obligations contained in section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)(C)) shall apply to all proposals for Federal agency activities occurring in Antarctica and affecting the quality of the human environment in Antarctica or dependent or associated ecosystems, only as specified in this section. For purposes of the application of such section 102 (2)(C) under this subsection, the term “significantly affecting the quality of the human environment” shall have the same meaning as the term “more than a minor or transitory impact”.
- (2)** **(A)** Unless an agency which proposes to conduct a Federal activity in Antarctica determines that the activity will have less than a minor or transitory impact, or unless a comprehensive environmental evaluation is being prepared in accordance with subparagraph (C), the agency shall prepare an initial environmental evaluation in accordance with Article 2 of Annex I to the Protocol.

**(B)** If the agency determines, through the preparation of the initial environmental evaluation, that the proposed Federal activity is likely to have no more than a minor or transitory impact, the activity may proceed if appropriate procedures are put in place to assess and verify the impact of the activity.

**(C)** If the agency determines, through the preparation of the initial environmental evaluation or otherwise, that a proposed Federal activity is likely to have more than a minor or transitory impact, the agency shall prepare and circulate a comprehensive environmental evaluation in accordance with Article 3 of Annex I to the Protocol, and shall make such comprehensive environmental evaluation publicly available for comment.
- (3)** Any agency decision under this section on whether a proposed Federal activity, to which paragraph (2)(C) applies, should proceed, and, if so, whether in its original or in a modified form, shall be based on the comprehensive environmental evaluation as well as other considerations which the agency, in the exercise of its discretion, considers relevant.
- (4)** For the purposes of this section, the term “Federal activity” includes all activities conducted under a Federal agency research program in Antarctica, whether or not conducted by a Federal agency.

**(b) Federal activities carried out jointly with foreign governments**

- (1)** For the purposes of this subsection, the term “Antarctic joint activity” means any Federal activity in Antarctica which is proposed to be conducted, or which is conducted, jointly or in cooperation with one or more foreign governments. Such term shall be defined in regulations promulgated by such agencies as the President may designate.
- (2)** Where the Secretary of State, in cooperation with the lead United States agency planning an Antarctic joint activity, determines that—

  - (A)** the major part of the joint activity is being contributed by a government or governments other than the United States;
  - (B)** one such government is coordinating the implementation of environmental impact assessment procedures for that activity; and
  - (C)** such government has signed, ratified, or acceded to the Protocol,

the requirements of subsection (a) of this section shall not apply with respect to that activity.

(3) In all cases of Antarctic joint activity other than those described in paragraph (2), the requirements of subsection (a) of this section shall apply with respect to that activity, except as provided in paragraph (4).

(4) Determinations described in paragraph (2), and agency actions and decisions in connection with assessments of impacts of Antarctic joint activities, shall not be subject to judicial review.

**(c) Nongovernmental activities**

(1) The Administrator shall, within 2 years after October 2, 1996, promulgate regulations to provide for—

(A) 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

(B) coordination of the review of information regarding environmental impact assessment received from other Parties under the Protocol.

(2) Such regulations shall be consistent with Annex I to the Protocol.

**(d) Decision to proceed**

(1) No decision shall be taken to proceed with an activity for which a comprehensive environmental evaluation is prepared under this section unless there has been an opportunity for consideration of the draft comprehensive environmental evaluation at an Antarctic Treaty Consultative Meeting, except that no decision to proceed with a proposed activity shall be delayed through the operation of this paragraph for more than 15 months from the date of circulation of the draft comprehensive environmental evaluation pursuant to Article 3(3) of Annex I to the Protocol.

(2) The Secretary of State shall circulate the final comprehensive environmental evaluation, in accordance with Article 3(6) of Annex I to the Protocol, at least 60 days before the commencement of the activity in Antarctica.

**(e) Cases of emergency**

The requirements of this section, and of regulations promulgated under this section, shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment, which require an activity to be undertaken without fulfilling those requirements.

**(f) Exclusive mechanism**

Notwithstanding any other provision of law, the requirements of this section shall constitute the sole and exclusive statutory obligations of the Federal agencies with regard to assessing the environmental impacts of proposed Federal activities occurring in Antarctica.

**(g) Decisions on permit applications**

The provisions of this section requiring environmental impact assessments (including initial environmental evaluations and comprehensive environmental evaluations) shall not apply to Federal actions with respect to issuing permits under section 2404 of this title.

**(h) Publication of notices**

Whenever the Secretary of State makes a determination under paragraph (2) of subsection (b) of this section, or receives a draft comprehensive environmental evaluation in accordance with Annex I, Article 3(3) to the Protocol, the Secretary of State shall cause timely notice thereof to be published in the Federal Register.

(Pub. L. 95-541, § 4A, as added Pub. L. 104-227, title I, § 104, Oct. 2, 1996, 110 Stat. 3038.)

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*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

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### **References in Text**

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.