



## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

### **14 CFR Part 1216**

**[Document Number-23-038; Docket Number-NASA-2023-0005]**

**RIN 2700-AE56**

### **Procedures for Implementing the National Environmental Policy Act**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) is amending and updating its regulations for implementing the National Environmental Policy Act of 1969 (NEPA). The amendments revise NASA's regulations to better align with the Agency's current and near future actions, adjust the level of NEPA review and documentation required for certain actions, and provide more concise descriptions of NASA actions. Additionally, consistent with NASA's requirement to review existing Categorical Exclusions (CatExs) at least every seven years to determine whether modifications, additions, or deletions are appropriate, this final rule incorporates updates to NASA's CatExs based on that review. With the exception of revisions to the legal authority citations, there are no textual changes between the proposed rule that published for public comment on May 3, 2023, and this final rule.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Tina Norwood, (202) 740-2308, [tina.norwood@nasa.gov](mailto:tina.norwood@nasa.gov). General information about NASA's NEPA process is available on the NASA NEPA Portal and NEPA Library at <https://www.nasa.gov/emd/nepa>.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The National Environmental Policy Act, as amended, 42 U.S.C. 4321–4347, requires Federal agencies to consider the environmental impact of their proposed actions (42 U.S.C. 4332(2)(C)). The Council on Environmental Quality (CEQ) has promulgated regulations at 40 CFR parts 1500 through 1508 (CEQ regulations) implementing NEPA that provide the overarching framework for Federal agency implementation of NEPA. On July 16, 2020, the CEQ issued a final rule comprehensively updating its regulations implementing NEPA, 85 FR 43304 (July 16, 2020). The CEQ regulations require Federal agencies to develop or revise their procedures for implementing NEPA, as necessary, for consistency with CEQ’s regulations or for efficiency (40 CFR 1507.3(b), (c)). However, the CEQ has extended the deadline for agencies to propose conforming adjustments to their agency NEPA procedures until September 14, 2023, 86 FR 34154 (June 29, 2021). Moreover, consistent with Executive Orders (EO) 13990 of January 20, 2021, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, and EO 14008 of January 27, 2021, Tackling the Climate Crisis at Home and Abroad, the CEQ is conducting a comprehensive review of the 2020 revisions to the CEQ regulations and is taking a phased approach to reconsider the regulations. See 86 FR 55757 (Oct. 7, 2021); 87 FR 23453 (Apr. 20, 2022). In this rulemaking, NASA is implementing new and revised CatExs, revising its list of actions normally requiring environmental impact statements or environmental assessments (EA), and making other clarifying non-substantive revisions. NASA will consider whether to propose additional changes to its procedures at the conclusion of CEQ’s ongoing rulemaking process.

NASA’s NEPA regulations are codified in 14 CFR subpart 1216.3 (Procedures for Implementing the National Environmental Policy Act). NASA consulted with the CEQ during the development of these updated procedures and prior to their publication in the Federal Register. These regulations 1) codify changes to NASA’s implementing

regulations which reflect lessons learned since NASA last amended its NEPA regulations in 2012 (77 FR 3102 (Jan. 23, 2012)); 2) encourage increased use of programmatic NEPA documents and tiering for routine and repetitive actions for which the environmental impact is well understood; and 3) add several new CatExs for NASA actions that neither individually nor cumulatively have a significant impact on the quality of the human environment.

In addition to NASA's implementing regulations, NASA provides specific instructions pertaining to NEPA program responsibilities internally through NASA Procedural Requirements (NPR) 8580.1, Implementing the National Environmental Policy Act and EO 12114, available at NASA's NEPA website <https://www.nasa.gov/emd/nepa> (under NEPA Process).

Since NASA's last NEPA regulatory revision in 2012, NASA's mission, programs, and strategic goals have evolved with a key focus on leading a new era of human space exploration, performing transformative aeronautics technology research, and continuing to study our planet and the solar system. This final rule builds upon decades of NASA's experience and seeks to better align with NASA's evolving technology and mission demands. NASA's NEPA regulations and policy will continue to be available on NASA's Public Portal at <https://www.nasa.gov/emd/nepa/> (under NEPA Process). In addition, NASA NEPA policy (NPR 8580.1) will be updated to reflect the revised updated NASA regulations and posted on the website.

**Public Comment Discussion:** NASA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on May 3, 2023 (88 FR 27804), which proposed amendments to its current regulations at 14 CFR part 1216. The 60-day comment period on the proposed rule closed on July 3, 2023. NASA received three comments on the public docket. Two of the comments are specific to this NPRM. Given their brevity, NASA sets forth the substantive comments, and NASA's response, in full below. NASA

received a third comment that did not pertain to NASA's NEPA process nor this rulemaking and which does not require a response. After a thorough review of the comments received, NASA made no changes to the text of this rule in response to the received comments.

**Public Comment #1:** "In paragraph one of the introduction section it says that NASA wants to 'adjust the level of NEPA review and documentation required for certain NASA actions that have become routine over the past decade for which NASA has determined they do not have significant environmental effects'. I am curious if this is effective. If NASA is doing their own review over what they believe does not effect the environment is it neutral? How do we know they're actually following environmental regulations when they did the review themselves. I feel as though they are biased in this determination and that outside agencies should check on this and make sure they actually do not negatively impact the environment before they are allowed to change the regulations."

**Public Comment #2:** "I support revising NEPA procedures to keep up to date on new scientific information and rapidly changing environmental conditions. But I oppose agency attempts to circumvent necessary NEPA analysis out of convenience or political expediency. NEPA remains a critically important law to ensure objective analysis of the potential environmental consequences of proposed actions and of feasible alternatives. It is also often the only opportunity for meaningful government transparency and public involvement.

The climate and extinction crises are escalating and pose an existential threat to humanity and the biosphere. It is imperative that NASA and other federal agencies use every NEPA analysis process to seek solutions to these crises. Our 'spaceship Earth' is in trouble and we need to be taking bold and innovative actions to save it.

Thank you very much for your consideration."

**NASA Response:** In response to the first comment, NASA notes that NEPA and the CEQ regulations implementing NEPA place the responsibility for evaluating the environmental impact of an action proposed by a Federal agency on the agency that proposes the action. 42 U.S.C. 4332(2)(C); 40 CFR 1501.2. The CEQ regulations also direct agencies to “adopt, as necessary, agency NEPA procedures to improve agency efficiency and ensure that agencies make decisions in accordance with the Act’s procedural requirements,” and to “consult with [CEQ] while developing or revising [their] proposed procedures.” 40 CFR 1507.3(b)(1), (c). To ensure NASA’s NEPA regulations properly reflect these statutory and regulatory mandates, NASA coordinated development of this rule with the CEQ, received Federal interagency comments during the EO 12866 interagency review process, and made the NPRM available for a 60-day period of public review and comment. On January 18, 2024, the CEQ provided a letter confirming that this rule is in conformity with NEPA and the CEQ regulations. This process ensured that NASA’s NEPA regulations are unbiased and conform to the CEQ’s NEPA regulations. NEPA and the CEQ regulations furthermore require NASA to ensure the professional integrity, including scientific integrity, of its environmental analyses. 42 U.S.C. 4332(2)(D); 40 CFR 1502.23. NASA’s regulations and policies in 14 CFR subpart 1216.1 will ensure that NASA’s analyses of environmental impacts of proposed actions will not pre-determine any outcome (i.e., will be neutral and present the decision maker with an evidence- and science-based analysis). 14 CFR 1216.1.

Further, NASA’s changes to its NEPA regulations are fully supported by: (1) the substantial administrative record, which provides supporting information for the review, development, and implementation of NASA’s new and modified CatExs; (2) NASA’s scoping and public notice and comment process, which has informed the Agency on the appropriate level of NEPA review to typically be applied to similar actions; and (3) final NEPA documents themselves, which are widely available to the public.

NASA directly benefits from its partnership with cooperating and consulting agencies and Native American Tribes that have jurisdiction over an aspect of a proposed action or special expertise with respect to any environmental issue. Such consultation and coordination are also required by other independent legal requirements (e.g., consultation under the Endangered Species Act, government-to-government consultation with Tribal Nations, consultation regarding effects to cultural resources under the National Historic Preservation Act; coordination with regard to impacts to wetlands under the Clean Water Act, etc.).

NASA also agrees with the second commenter's statements regarding the importance of NEPA and its critical role in objective agency decision-making. NASA is not updating the rule to circumvent the NEPA process out of convenience or political expediency. Rather, the updates to the regulations seek to improve NASA's consideration of environmental impacts related to its evolving mission, which includes the study of the Earth and collection of data essential to man's understanding of short and long-term effects of climate change. By encouraging programmatic reviews and updating NASA's list of categorical exclusions, the regulation drives efficiencies that will help NASA further this mission. In addition, NASA's final rule provides transparency and public involvement, emphasizing NASA's commitment to the integrity of the NEPA process.

**Statutory Authority:** The National Aeronautics and Space Act, 51 U.S.C. 20101 *et seq.*, authorizes the NASA Administrator to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

### **Regulatory Analysis**

#### A. Executive Order (EO) 12866--Regulatory Planning and Review

EOs 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that

maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). EO 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. After conferring with the Office of Management and Budget, this final rule has been determined to not meet the criteria set forth under section 3(f) of EO 12866 for designation as a “significant regulatory action.”

#### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the final rule is published. This requirement does not apply if the agency “certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities” (5 U.S.C. 603). This final rule modifies existing policies and procedural requirements for NASA compliance with NEPA. The final rule makes no substantive changes to requirements imposed on applicants for licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, NASA certifies this final rule does not have a “significant economic impact on a substantial number of small entities.”

#### C. Review Under the Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### D. Environmental Review Under the National Environmental Policy Act

The final rule revises agency procedures and guidance for implementing NEPA. NASA NEPA procedures are procedural guidance to assist in the fulfillment of Agency responsibilities under NEPA but are not the Agency’s final determination of what level of NEPA analysis is required for a particular proposed action. The CEQ sets forth the requirements for establishing agency NEPA procedures in its regulations at 40 CFR

1507.3. The CEQ regulations do not require agencies to conduct NEPA analyses or prepare NEPA documentation when establishing their NEPA procedures. The determination that establishing agency NEPA procedures does not require supporting NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972-73 (S.D. Ill 1999), *aff'd*, 230 F.3d 947, 954-55 (7<sup>th</sup> Cir. 2000).

#### E. Review Under Executive Order 13132

NASA has considered this final rule under the requirements of EO 13132, Federalism. The Agency has concluded that the rule conforms with the federalism principles set out in this EO, will not impose any compliance costs on the states, and will not have substantial direct effects on the states or the relationship between the National Government and the states or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

#### F. Review Under the Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1531-1538), NASA has assessed the effects of the final rule on state, local, and Tribal governments, and the private sector. This final rule would not compel the expenditure of \$100 million or more by any state, local, or Tribal government, or anyone in the private sector. Therefore, this final rule is not subject to the requirements of section 202 and 205 of the UMRA.

#### G. Expected Impact of the Final Rule

NASA does not expect this final rule to have any economic impact on the overall economy of the United States; state, local, or Tribal governments or communities; or any private party involved in commercial space launch activities at NASA facilities. Given the most recent data NASA has available, most NASA actions fall within the scope of a



CatEx (98 percent categorically excluded, 1.4 percent had an environmental assessment (EA)/Finding of No Significant Impact, and 0.16 percent had an environmental impact statement (EIS)/Record of Decision). By expanding the list of actions covered by a CatEx, this final rule promotes more efficient NEPA compliance without sacrificing the integrity of the environmental impact review process for those actions which may require an EA or EIS.

The updates to several existing NASA CatExs and the addition of nine new CatExs are intended to further streamline NASA NEPA compliance for actions that, individually or cumulatively, do not have a significant impact on the quality of the human environment. The final rule does not materially alter the budgetary impact of entitlements, grants, NASA loan programs, or the rights and obligations of recipients thereof. The final rule does not raise novel legal or policy issues; rather it promotes consistency with the CEQ's NEPA implementing regulations, thereby providing more regulatory certainty concerning NEPA compliance obligations to both NASA programs and commercial space operators who may propose actions that would occur on NASA jurisdictional facilities. Therefore, this final rule is not expected to have any adverse effect, economically or otherwise, on NASA, any other Federal, state, local, or Tribal entity, or any private party who may propose an action that would occur at a NASA jurisdictional facility.

#### **List of Subjects in 14 CFR Part 1216**

Environmental impact statements, Flood plains, Foreign relations.

For the reasons given in the preamble, NASA amends 14 CFR part 1216 as follows:

#### **PART 1216—ENVIRONMENTAL QUALITY**

1. Add an authority citation for part 1216 to read as follows:

**Authority:** 51 U.S.C. 20101 *et seq.*; 42 U.S.C. 4321 *et seq.*; 42 U.S.C. 4371 *et seq.*; 42 U.S.C. 7609; 40 CFR parts 1500 through 1508.

**Subpart 1216.3—Procedures for Implementing the National Environmental Policy Act (NEPA)**

2. The authority citation for subpart 1216.3 is revised to read as follows:

**Authority:** 51 U.S.C. 20101 *et seq.*; 42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500 through 1508.

3. Amend §1216.300 by revising paragraph (b) to read as follows:

**§ 1216.300 Scope.**

\* \* \* \* \*

(b) Through this subpart, NASA adopts the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500 through 1508) and supplements those regulations with this subpart, for actions proposed by NASA that are subject to NEPA. This subpart and NASA's NEPA policy are available on NASA's Public Portal at <https://www.nasa.gov/emd/nepa>.

4. Revise §1216.302 to read as follows:

**§ 1216.302 Responsibilities.**

(a) The NASA Senior Agency Official (SAO), is the Associate Administrator, Mission Support Directorate. The SAO is responsible for overall Agency NEPA compliance, including integration of NEPA into the Agency's planning and decision making and resolving implementation issues.

(1) The NASA Senior Environmental Official (SEO) is the Assistant Administrator, Office of Strategic Infrastructure. The SEO, in consultation with the SAO, is responsible for development and implementation of NASA NEPA policy requirements and guidance which fully integrate NEPA compliance into Agency planning and decision-making processes. To the extent the CEQ's implementing regulations at 40 CFR parts 1500 through 1508 reserve a specific authority to the

SAO, the SAO is the responsible NASA official for resolving matters related to that specific authority.

(2) The NASA Headquarters/Environmental Management Division (HQ/EMD), in consultation with the SEO, is responsible for implementing NEPA functions and guiding NASA's integration of NEPA into the Agency's planning and decision making. HQ/EMD provides oversight of all NASA entities in implementing their assigned responsibilities under NEPA. HQ/EMD, in coordination with the Center Environmental Management Office, is responsible for determining the appropriate level of NEPA documentation and maintaining a publicly accessible internet portal which includes information on the status of environmental impact statements (EISs) and other elements of NASA's NEPA program (<https://www.nasa.gov/emd/nepa>).

(3) Each NASA Center has an environmental management office that directs and implements the NEPA process, such as evaluating proposed actions; developing, reviewing, and approving required documentation; and advising Center-level program and project managers.

(b) The "Responsible Official" is the NASA official who will ensure that planning and decision-making for each proposed Agency action complies with the regulations in this subpart and with Agency NEPA policy and guidance provided by the SAO, SEO, HQ/EMD, and the Center's environmental management office as applicable.

(c) NASA must comply with this subpart when considering issuance of a permit, lease, easement, or grant to a non-Federal party and may seek such non-Federal party's assistance in obtaining necessary information and completing the NEPA process.

5. Revise §1216.303 to read as follows:

**§ 1216.303 NEPA process in NASA planning and decision making.**

(a) NEPA is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their proposed actions in the decision-making process. Full integration of the NEPA process with NASA project and program planning improves Agency decisions and ensures:

(1) Consideration of sustainability, environmental stewardship, and compliance with applicable environmental statutes, regulations, and policies.

(2) NASA's analyses and documentation are prepared using a process that is transparent to the public, including opportunities for receipt and consideration of public comment, when appropriate.

(3) Potential program and project risks and delays are minimized.

(b) In considering whether the effects of a proposed action are significant and determining the appropriate level of NEPA review and documentation (i.e., EIS, environmental assessments (EA), categorical exclusions (CatEx)), NASA shall consider and analyze the potentially affected environment (i.e., affected area [national, regional, or local] and resources located therein) and the degree of the effects of the proposed action (e.g., short- and long-term effects, effects both beneficial and adverse, effects on public health and safety, effects that would violate Federal, state, Tribal, or local law protecting the environment).

(c) NASA shall consider the reasonably foreseeable environmental impacts of a proposed Agency action, along with technical, economic, public health and safety, security, and other factors that are reasonably foreseeable, beginning in the early planning stage of a proposed action. NASA will not take any action that would have an adverse environmental impact or limit the choice of reasonable alternatives prior to completing NEPA review except as provided in 40 CFR 1506.1.

- (d) Records of Environmental Consideration (RECs) will be used to document: (1) Application of specific categorical exclusions to proposed actions;
- (2) Adoption of Federal draft or final NEPA documents;
- (3) Reevaluation of an existing NEPA document; and
- (4) Determination of whether an action fits within an existing NEPA document, including a programmatic NEPA document.

6. Amend §1216.304 by:

- a. Revising paragraphs (a), (b), (c) introductory text, (c)(1), and (c)(3) through (6);
- b. Removing paragraph (c)(7);
- c. Revising paragraphs (d) introductory text and (d)(1)(ii) and (iv) through (vi);
- d. Adding paragraph (d)(1)(ix);
- e. Revising paragraphs (d)(2)(i) through (iii) and (v);
- f. Adding paragraphs (d)(2)(vi) through (ix);
- g. Revising paragraphs (d)(3) and (d)(4)(ii) through (iv);
- h. Adding paragraphs (d)(4)(vi) and (vii);
- i. Revising paragraphs (d)(5)(i) and (ii) and (e); and
- j. Removing paragraph (f).

The revisions and additions read as follows:

**§ 1216.304 Categorical exclusions.**

(a) Categorical exclusions (CatExs) are categories of Agency actions that normally do not have a significant effect on the human environment and therefore do not require preparation of an EA or EIS. CatExs reduce paperwork, improve Government efficiency, and eliminate delays in initiating and completing proposed actions having no significant environmental impact. For some CatExs, as indicated in paragraph (d) of this section, a REC is required.

(b) Application of CatExs and presence of extraordinary circumstances:

(1) A proposed action may be categorically excluded if the action fits within the categories listed in paragraph (d) of this section and it does not involve any extraordinary circumstances in which a normally excluded action may have a significant effect.

(2) If an extraordinary circumstance as described in paragraph (c) of this section is present, NASA may nevertheless categorically exclude the proposed action if the action fits within the categories listed in paragraph (d) of this section and NASA determines that implementation of mitigation measures, such as relocation of the proposed action to an alternative site or limiting construction activities to certain seasonal periods of the year to avoid the extraordinary circumstance(s) in question, are sufficient to allow the proposed action to be categorically excluded.

(c) Extraordinary circumstances include situations where the proposed action:

(1) Has a reasonable likelihood of having a significant effect on public health and safety or the human environment.

\* \* \* \* \*

(3) Is of significantly greater scope or size than is normal for the particular category of action.

(4) Has a reasonable likelihood of having effects that would violate Federal, state, Tribal, or local laws, or other enforceable requirements applicable to environmental protection.

(5) May adversely affect sensitive resources, such as, but not limited to, Federally listed threatened or endangered species, their designated critical habitat, wilderness areas, floodplains, wetlands, aquifer recharge areas, coastal zones, wild and scenic rivers, and significant fish or wildlife habitat, unless the impact has been resolved through another environmental review process (e.g., the Clean Water Act (CWA) or the Coastal Zone Management Act (CZMA)).

(6) May adversely affect national natural landmarks or cultural or historic resources, including, but not limited to, property listed on or eligible for listing on the National Register of Historic Places, unless the impact has been resolved through another review process (e.g., the National Historic Preservation Act (NHPA)).

(d) The following actions normally do not have a significant effect on the human environment and are categorically excluded from the requirement to prepare an EA or EIS:

(1) \* \* \*

(ii) Issuing procedural rules, manuals, directives, and requirements.

\* \* \* \* \*

(iv) Preparing documents, including design and feasibility studies, analytical supply and demand studies, reports and recommendations, master and strategic plans, and other advisory documents.

(v) Information-gathering exercises, such as inventories, audits, and studies.

(vi) Preparing and disseminating information, including document mailings, publications, classroom materials, conferences, speaking engagements, websites, and other educational/informational activities.

\* \* \* \* \*

(ix) Field studies, including water sampling, monitoring wells, cultural resources surveys, biological surveys, geologic surveys, modeling or simulations, routine data collection and analysis, and/or temporary equipment.

(2) \* \* \*

(i) Routine maintenance, minor construction or rehabilitation, minor demolition, minor modification, minor repair, and continuing or altered operations at, or of, existing NASA or NASA-funded or -approved facilities and equipment, such as buildings, roads, grounds, utilities, communication systems, and ground support

systems (e.g., space tracking and data systems). This includes routine operations such as security, public health and safety, and environmental services.

(ii) Installing or removing equipment, including component parts, at existing Government or private facilities.

(iii) Contributing equipment, software, technical advice, exchanging data, and consulting with other agencies and public and private entities.

\* \* \* \* \*

(v) Routine packaging, labeling, storage, transportation, and disposal of materials and wastes, in accordance with applicable Federal, state, Tribal, or local laws or requirements. Examples include but are not limited to hazardous, non-hazardous, and other regulated materials and wastes.

(vi) Habitat and species management activities conducted within the boundaries of NASA-controlled properties in accordance with applicable Federal, state, or local requirements. Examples include but are not limited to restoration of unique or critical habitat; thinning or brush control to improve growth of natural habitat, reduce invasive species, or reduce fire hazard; prescribed burning to reduce natural fuel build-up, reduce invasive species, or improve native plant vigor; planting appropriate vegetation that does not include noxious weeds or invasive plants; or wildlife management activities (REC required).

(vii) Small-scale, short-term cleanup actions under the Resource Conservation and Recovery Act or other authorities to reduce risk to human health or the environment from the release or imminent and substantial threat of release of a hazardous substance other than high-level radioactive waste and spent nuclear fuel, including treatment (such as incineration, encapsulation, physical or chemical separation, and compaction), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action.



(viii) Replacement of existing energy sources with alternative or renewable energy sources that comply with existing permit conditions.

(ix) Routine maintenance, repair, and operation of vessels (including unmanned autonomous surface vessels), aircraft (including unmanned aircraft systems), overland/surface transportation vehicles, and other transportation systems as applicable. Examples include but are not limited to transportation or relocation of NASA equipment and hardware by barge, aircraft, or surface transportation system (e.g., tractor trailer or railroad); retrieval of spent solid rocket boosters by vessel; repair or overhaul of vessel, aircraft, or surface transportation systems that do not result in a change in the environmental impacts of their normal operation.

(3) Research, Development, and Science Activities including:

(i) Research, development, testing, and evaluation in compliance with all applicable Federal, state, Tribal, or local laws or requirements and Executive Orders. This includes the research, development, testing, and evaluation of scientific instruments proposed for use on spacecraft, aircraft (including unmanned aircraft systems), sounding rockets, balloons, laboratories, watercraft, or other outdoor activities.

(ii) Use of small quantities of radioactive materials used for instrument detectors, calibration, and other purposes. Materials may be associated with the proposed use on spacecraft, aircraft (including unmanned aircraft systems), sounding rockets, balloons, laboratories, watercraft, or other outdoor activities.

(iii) Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, where such use meets all applicable Federal, state, Tribal, or local laws or requirements and Executive orders. This includes lasers associated with spacecraft, aircraft (including unmanned aircraft systems), sounding rockets, balloons, laboratories, watercraft, or other outdoor activities.

(iv) Use of non-space nuclear system payloads on various platforms (e.g., launch vehicle, sounding rocket, scientific balloon, and aircraft) (REC required).

(v) Return of samples from solar system bodies (e.g., asteroids, comets, planets, dwarf planets, and planetary moons) to Earth when categorized as an Unrestricted Earth Return. NASA defines this activity as collecting extraterrestrial materials from solar system bodies, deemed by scientific opinion to have no indigenous life forms, and returning those samples to Earth (REC required).

(4) \* \* \*

(ii) Granting or accepting easements, leases, licenses, rights-of-entry, and permits to use NASA property, or any non-NASA property, for activities that would be categorically excluded in accordance with this section (REC required).

(iii) Transfer or disposal of real property, property rights, or interests if a resulting change in use is a use that would be categorically excluded under this section (REC required).

(iv) Transferring real property administrative control to another Federal agency, including the return of public domain lands to the Department of the Interior (DoI) or other Federal agencies, and reporting of property as excess and surplus to the General Services Administration (GSA) for disposal, when the agency receiving administrative control (or GSA, following receipt of a report of excess) shall complete any necessary NEPA review prior to any change in land use (REC required).

\* \* \* \* \*

(vi) Change in the facility status of real property assets (e.g., active or inactive).

(vii) Reductions, realignments, or relocation of personnel into existing Federally owned or commercially leased space that does not involve a substantial change affecting the supporting infrastructure (e.g., no increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase).

(5) \* \* \*

(i) Periodic aircraft (including unmanned aircraft systems) flight activities, including training and research and development, which are routine and comply with applicable Federal, state, Tribal, or local laws or requirements, and Executive Orders.

(ii) Relocation of similar aircraft (including unmanned aircraft systems) not resulting in a substantial increase in total flying hours, number of aircraft operations, operational parameters (e.g., noise), or permanent personnel or logistics support requirements at the receiving installation (REC required).

(e) The Responsible Official shall review the proposed action in its early planning stage and consider the scope of the action, the potentially affected environment, and the degree of the reasonably foreseeable effects of the action to determine whether extraordinary circumstances exist that could result, either individually or cumulatively, in significant environmental impacts. If extraordinary circumstances exist, the Responsible Official must determine whether application of the categorical exclusion to the proposed action is appropriate or whether preparation of an EA or EIS is required.

7. Revise §1216.305 to read as follows:

**§ 1216.305 Actions normally requiring an environmental assessment (EA).**

(a) NASA shall prepare an EA, which complies with 40 CFR 1501.5, when a proposed action is not categorically excluded and is not likely to have significant effects or when the significance of the effects is unknown. NASA shall consider the potentially affected environment and degree of the effects of the action when determining whether to prepare an EA.

(b) NASA actions normally requiring an EA include:

(1) Altering the ongoing operations at a NASA Center where the significance of the environmental effect(s) is unknown.

- (2) Construction or modifications of facilities that represent a major change to an existing master plan and could result in a change in the environmental effect(s).
- (3) Actions that are expected to result in major changes to established land use.
- (4) Launching a spacecraft containing a space nuclear system. Space nuclear systems include radioisotope power systems, such as radioisotope thermoelectric generators and radioisotope heater units, and fission systems used for surface power and spacecraft propulsion.

8. Revise §1216.306 to read as follows:

**§ 1216.306 Actions normally requiring an environmental impact statement (EIS).**

(a) NASA shall prepare an EIS for actions that are likely to significantly impact the quality of the human environment, including actions for which an EA demonstrates that significant environmental impacts will potentially occur which will not be reduced or eliminated by changes to the proposed action or mitigation of its potentially significant environmental impacts. An EIS shall be prepared and published in accordance with CEQ's implementing regulations (40 CFR part 1502).

(b) NASA actions normally requiring an EIS include:

(1) Development and operation of new NASA-developed launch vehicles or space transportation systems.

(2) Management, including recovery, transport, and curation, of sample returns to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, and planetary moons) that would receive a Restricted Earth Return categorization. NASA requires such a mission to include additional measures to ensure any potential indigenous life form would be contained so it could not adversely impact humans or Earth's environment.

(3) Substantial construction projects expected to result in significant effect(s) on the quality of the human and natural environment when such construction and its effects are not within the scope of an existing master plan.

9. Revise §1216.307 to read as follows:

**§ 1216.307 Programmatic documents and tiering.**

- (a) For actions that require EAs or EISs, NASA encourages programmatic-level analysis for actions that are similar in nature, broad in scope, or likely to have similar environmental effects. Programmatic NEPA analyses may take place in the form of an EA or EIS. (b) Tiering from previously prepared EISs or EAs is appropriate when it would eliminate repetitive discussions of the same issues and exclude from consideration issues already decided. Tiering from a programmatic-level NEPA document is appropriate for site- or project-specific actions that are included within the scope of the programmatic-level analysis.

10. Revise §1216.308 to read as follows:

**§ 1216.308 Supplemental EAs and EISs.**

(a) In cases where a major Federal action remains to occur, supplemental documentation may be required for previously prepared EAs or EISs under the following circumstances:

- (1) If substantial changes are made to the proposed action that are relevant to environmental concerns; or
- (2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action and its impacts; or
- (3) NASA determines that the purposes of NEPA will be furthered by doing so.

(b) The preparation of a supplemental EA or EIS shall be undertaken using the same procedural requirements set forth in 40 CFR 1501.5 or 40 CFR part 1502, as applicable; however, in the event a supplement to an EIS is required, scoping shall not be required

unless, at NASA's discretion and in consideration of the factors and requirements of 40 CFR 1501.9, it is determined to be necessary or would otherwise further the purposes of NEPA.

(c) When it is unclear if an EA or EIS supplement is required, NASA may prepare a Supplement Analysis.

(1) The Supplement Analysis will discuss the circumstances that are pertinent to deciding whether to prepare a supplemental EA or EIS.

(2) The Supplement Analysis will contain sufficient information for NASA to determine whether:

(i) An existing EA or EIS should be supplemented;

(ii) A new EA or EIS should be prepared; or

(iii) No further NEPA documentation is required.

(3) NASA shall make the determination and the related Supplement Analysis available to the public for information.

(d) When applicable, NASA shall incorporate the determination and supporting Supplement Analysis made under paragraph (b) of this section, into the administrative record related to the action that is the subject of the EA or EIS supplement or determination.

11. Revise §1216.309 to read as follows:

**§ 1216.309 Mitigation and monitoring.**

When the analysis proceeds to an EA or EIS and mitigation measures are adopted for the purpose of avoiding or reducing the significance of environmental impacts, such mitigation measures will be identified in the EA Finding of No Significant Impact (FONSI) or the EIS Record of Decision (ROD). NASA shall implement mitigation measures (including adaptive management strategies, where appropriate) consistent with applicable FONSI and/or RODs and shall monitor their implementation and

effectiveness. The Responsible Official shall ensure that funding for such mitigation measures is included in the program or project budget.

12. Amend §1216.310 by revising paragraph (a) to read as follows:

**§ 1216.310 Classified actions.**

(a) The classified status of a proposed action does not relieve NASA of the requirement to assess, document, and consider the environmental impacts of a proposed action.

\* \* \* \* \*

13. Revise §1216.311 to read as follows:

**§ 1216.311 Emergency responses.**

(a) When the Responsible Official determines that emergency circumstances exist which make it necessary to take immediate response and/or recovery action(s) before preparing a NEPA analysis, then the following provisions apply:

(1) The Responsible Official may undertake immediate emergency response and/or recovery action(s) necessary to protect life, property, or valuable resources. When taking such action(s), the Responsible Official shall, to the extent practicable, mitigate foreseeable adverse environmental impacts.

(2) At the earliest practicable time, the Responsible Official shall notify the SAO of the emergency and any past, ongoing, or future NASA emergency response and/or recovery action(s). The SAO shall determine if NEPA applies and the appropriate level of NEPA analysis to document the emergency. If the emergency response and/or recovery action(s) will reasonably result in significant environmental impacts, the SAO shall consult with the CEQ about alternative arrangements for compliance with NEPA.

(b) If the Responsible Official proposes emergency response and/or recovery actions that will continue beyond those needed to immediately protect life, property, and valuable resources, the Responsible Official shall consult with the SAO to determine the

appropriate level of NEPA compliance. If continuation of the emergency actions will reasonably result in significant environmental impacts, the SAO shall consult with the CEQ about alternative arrangements for compliance.

14. Revise Appendix A to Subpart 1216.3 to read as follows:

**Appendix A to Subpart 1216.3 of Part 1216 -- Acronyms**

CatEx	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DoI	(U.S.) Department of the Interior
EA	Environmental Assessment
EMD	Environmental Management Division
EIS	Environmental Impact Statement
FONSI	Finding of No Significant Impact
FR	Federal Register
GSA	General Services Administration
HQ	Headquarters
NASA	National Aeronautics and Space Administration
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
REC	Record of Environmental Consideration
RHU	Radioisotope Heater Unit
RPS	Radioisotope Power Systems
SAO	Senior Agency Official
SEO	Senior Environmental Official



OGC	Office of the General Counsel
ROD	Record of Decision
U.S.C.	United States Code

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