

feet above the surface to accommodate new standard instrument approach procedures at Evansville Regional Airport, Evansville, IN. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Evansville Regional Airport, Evansville, IN.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### AGL IN E5 Evansville, IN [Amended]

Evansville Regional Airport, IN  
(Lat. 38°02'18" N., long. 87°31'51" W.)  
Pocket City VORTAC  
(Lat. 37°55'42" N., long. 87°45'45" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Evansville Regional Airport, and within 2.2 miles each side of the 001° bearing from the airport extending from the 6.8-mile radius to 11.2 miles north of the airport, and within 2.2 miles each side of the 181° bearing from the airport extending from the 6.8-mile radius to 11.3 miles south of the airport, and within 4 miles each side of the Pocket City VORTAC 060° radial extending from the 6.8-mile radius to the VORTAC.

Issued in Fort Worth, TX, on July 12, 2011.

#### Anthony D. Roetzel,

Manager, Operations Support Group, AJV-C2 ATO Central Service Center.

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### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 14 CFR Part 1216

[Notice (11–069)]

RIN 2700–AD71

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

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) hereby gives notice that it is proposing revised policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality's (CEQ) Code of

Federal Regulations (CFR). This proposed rule would replace procedures contained in NASA's current regulation, *Procedures for Implementing the National Environmental Policy Act*. The revision is necessary to clarify and update the current regulation. Since the previous major update of NASA's NEPA regulation in 1988, a number of Executive Orders have streamlined the Federal Government through decentralization, reduction and simplification of regulations, and management of risk. This proposed rule strives to meet the spirit of these Executive Orders, which are included in the section entitled *Procedural Requirements* herein.

**DATES:** Submit comments on or before September 19, 2011.

**ADDRESSES:** Comments can be submitted by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments electronically. Comments may be entered directly on the Web site. Electronic files may be submitted to this Web site.

2. *Mail comments to:* NASA Rulemaking Comments, Environmental Management Division, Suite 5B11, 300 E Street, SW., Washington, DC 20546. Because security screening may delay mail sent through the U.S. Postal Service, NASA encourages electronic submittal of comments.

**FOR FURTHER INFORMATION CONTACT:** For general information about NASA's NEPA process, readers are directed to the NASA NEPA Portal and NEPA Library at <http://www.nasa.gov/green/nepa/>. Questions may be directed to Tina Borghild Norwood, NASA NEPA Manager, at (202) 358–7324, or via e-mail at [Tina.Norwood-1@nasa.gov](mailto:Tina.Norwood-1@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

*Comments:* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Background

This proposed rule revises policies and responsibilities for assessing the effects of NASA's actions in accordance with NEPA (revising the current regulation at 14 CFR 1216.3). The last major revision of this regulation was

previously published in 53 FR 9761 on March 25, 1988. Since that time, understanding and implementation of NEPA has matured, and initiatives such as the National Performance Review have streamlined the Federal Government through decentralization, reduction, and simplification of regulations.

### Introduction

NASA is amending its procedures for implementing the requirements of NEPA, 42 U.S.C. 4321–4347. The proposed amendments include: (1) Consolidating and standardizing the procedural provisions of the Agency's environmental review process under NEPA; (2) clarifying the general procedures associated with categorical exclusions (CatExs), consolidating the categories of actions subject to categorical exclusion, and amending existing and adding new CatExs; (3) adding extraordinary circumstances as factors which limit the applicability of CatExs; (4) consolidating and amending the actions that generally require an EIS or Environmental Assessment (EA); and (5) incorporating other proposed revisions consistent with the CEQ regulations.

These proposed regulations, like NASA's existing NEPA regulations, are a supplement to the CEQ regulations implementing NEPA. These proposed regulations were drafted with the objective of minimizing repetition of requirements already contained in the CEQ regulations and with the understanding that these NASA-specific regulations would be applied with (and be bounded by) the CEQ regulations. The terminology used in this Preamble and the proposed regulations include many words and phrases that are specifically defined in either NEPA or the CEQ regulations. Many of these definitions can be found in part 1508 of the CEQ regulations (40 CFR part 1508).

### Revised Categorical Exclusions

As part of this rulemaking, NASA is amending existing and adding new categories of actions that are eligible for categorical exclusion and proposing to add generally applicable extraordinary circumstances to bound the use of all NASA categorical exclusions. Consistent with CEQ regulations, § 1216.304 of the proposed rule defines "categorical exclusion" to mean "categories of agency actions with no individually or cumulatively significant effect on the human environment." Some of the new CatExs are similar to the CatExs of other Federal agencies and reflect NASA's experience with similar factual circumstances. Other new

CatExs are more specific to NASA and reflect NASA's past experience with similar factual circumstances, which were considered by NASA's environmental professionals when applying NASA's current NEPA process, and which have been found, through monitoring, to have no significant impacts on the "human environment" (as that term is broadly defined in CEQ regulations at 40 CFR 1508.4).

The rationale supporting the amended and new CatExs and extraordinary circumstances is summarized herein. The CEQ regulations state that Federal agencies must implement NEPA procedures, in part to "reduce paperwork and the accumulation of extraneous background data and to emphasize real environmental issues and alternatives." (40 CFR 1500.2(b)). NASA believes that amending current and identifying new CatExs meets the intent of this NEPA policy. For ease of comparison, the current NASA CatExs (adopted in 1988) are as follows:

(1) Research and Development (R&D) or Space Flight, Control, and Data Communications (SFCDC) activities in space science (e.g., physics and astronomy research and analysis, planetary exploration mission operations and data analysis) other than specific spacecraft development and flight projects.

(2) R&D activities in space and terrestrial applications (e.g., resource observations, applied research and data analysis, technology utilization) other than specific spacecraft development and flight projects.

(3) R&D activities in aeronautics and space technology and energy technology applications (e.g., research and technology base, systems technology programs) other than experimental projects.

(4) R&D (or SFCDC) activities in space transportation systems engineering and scientific and technical support operations, routine transportation operations, and advanced studies.

(5) R&D (or SFCDC) activities in space tracking and data systems.

(6) Facility planning and design (funding).

(7) Minor construction of new facilities, including rehabilitation, modification, and repair.

(8) Continuing operations of a NASA installation at a level of effort, or altered operations, provided the alterations induce only social and/or economic effects, but no natural or physical environmental effects.

For proposed Agency actions that do not clearly require an EIS or EA, NASA uses a Record of Environmental Consideration (REC) to record: (1) The

fact that a proposed action has been reviewed for environmental impacts and (2) the level of NEPA documentation required for the proposed action. RECs typically cite an applicable CatEx. The RECs cited in this preamble provide examples of past NASA activities that support the proposed CatEx in that the activities were monitored and did not create environmental effects.

Where a new CatEx is proposed and NASA relies on previous RECs, these RECs are available for review in the NASA NEPA Library on the NASA NEPA Web site at <http://www.nasa.gov/green/nepa/index.html>. The public portal also includes links to other relevant NASA environmental policies and practices. For example, NASA monitors actions while they are being performed and after they are completed to ensure they have caused no significant environmental effects. Such monitoring is included as part of the NASA Environmental Management System (EMS). NASA also utilizes an external environmental auditing system known as Environmental Functional Reviews (EFRs) to ensure compliance with NEPA. Both the EMS and EFR are discussed on the NASA NEPA Web site.

The NASA NEPA Web site also provides the full name and location of all ten NASA Centers and five Component Facilities.

The applicability of any CatEx to Agency actions is limited by the extraordinary- circumstances analysis required by this proposed regulation and described in detail following the discussion of the proposed CatExs. The following paragraphs review the 23 CatExs included in the proposed rule. Where CatExs are amended or consolidated, the reasons are provided. For new CatExs, the supporting rationale is explained.

NASA provides specific instructions pertaining to implementation of NEPA program responsibilities internally through NASA Procedural Requirements (NPR), 8580.1. NASA has identified that the 13 proposed CatExs under the heading "Administrative Activities" and "Operations and Management Activities" do not result in individually or cumulatively significant environmental impacts. As a result, the NPR will be updated to reflect that no environmental checklist is required. A REC will be required for the remaining ten CatExs.

*§ 1216.304(d)(1): Administrative Activities including:*

(i) Personnel actions, organizational changes, and procurement of routine goods and services.

(ii) Issuance of procedural rules, manuals, directives, and requirements.

(iii) Program budget proposals, disbursements, and transfer or reprogramming of funds.

(iv) Preparation of 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, studies, and field studies, including water sampling, cultural resources surveys, biological surveys, geologic surveys, modeling or

simulations, and routine data collection and analysis activities.

(vi) Preparation and dissemination of information, including document mailings, publications, classroom materials, conferences, speaking engagements, Web sites, and other educational/informational activities.

(vii) Software development, data analysis, and/or testing, including computer modeling.

(viii) Interpretations, amendments, and modifications to contracts, grants, or other awards.

Under the heading “Administrative Activities,” NASA is proposing eight new CatExs. Based on NASA’s experience with these types of actions, as documented in the following examples of NASA RECs and other environmental documentation which have been completed and monitored by NASA environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

| Center            | Date       | Title  |
|-------------------|------------|--|
| 1. JPL, CA .....  | 11/10/2008 | NASA Extragalactic Database.   |
| 2. JPL, CA .....  | 03/12/2009 | Advanced Information System Technology.  |
| 3. JPL, CA .....  | 05/19/2009 | GIPSY/RTG Software Support for Specialized Studies.                            |
| 4. NASA HQ .....  | 09/23/2009 | ARRA Implementation of Venture-Class Mission, HQ ID-1095.                      |
| 5. LaRC, VA ..... | 11/20/2009 | Develop Data Acquisition System to be added to Embedded Avionics Research Lab. |
| 6. LaRC, VA ..... | 03/23/2010 | Contrail Study Document.   |

In addition, based on a review of the activities covered by other agencies’ CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples of other agencies’ CatExs include:

1. Army, 32 CFR, Appendix B, Section II(b)(1-14) Administrative/ Operation Activities.

2. Environmental Protection Agency, 40 CFR 6.204(a)(2)(I). Procedural, ministerial, administrative, financial, personnel, and management actions necessary to support the normal conduct of EPA business.

3. Navy, 32 CFR 775.6(f)(1), (2), (4), (5), and (10) Routine final and administrative activities.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activities under this CatEx would not result in significant environmental impacts and are, therefore, eligible for categorical exclusion.

§ 1216.304(d)(2): Operations and Management Activities including:

(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, such as space tracking and data systems.

(ii) Installation or removal of equipment, including component parts, at existing Government or private facilities.

(iii) Contribution of equipment, software, technical advice, exchange of data, and consultation to other agencies and public and private entities, where such assistance does not control a receiving entity’s program, project, or activity.

(iv) NASA ceremonies, commemorative events, and memorial services.

(v) Routine packaging, labeling, storage, and transportation of hazardous materials and wastes in accordance with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements.

Under the heading “Operations and Management Activities,” NASA is proposing five CatExs. The first one is “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, such as space tracking and data systems.” This proposed CatEx consolidates two existing NASA CatExs. For years, NASA has relied on the existing CatExs for routine maintenance and repair activities at facilities it owns and operates. Based on NASA’s experience with these types of actions, as documented in the following examples of NASA RECs and other environmental documentation which have been completed and monitored by NASA’s environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

| Center            | Date       | Title   |
|-------------------|------------|---|
| 1. MSFC, AL ..... | 09/04/2002 | Replace Roofing System (103).                       |
| 2. MSFC, AL ..... | 09/04/2002 | Replace Roofs (101, 102).                           |
| 3. KSC, FL .....  | 07/17/2007 | Close/Demolish Facilities Structures Project 97963. |
| 4. SSC, MS .....  | 08/18/2008 | Replace Potable Water Well System.                  |
| 5. JSC, TX .....  | 03/18/2009 | Replace Hangar 280.                                 |
| 6. JSC, TX .....  | 03/18/2009 | Repair JSC Barge Dock.                              |
| 7. SSC, MS .....  | 02/23/2010 | Child Day Care Drainage System Improvements.        |
| 8. SSC, MS .....  | 7/19/2010  | Internal Modification North Gate Reception Center.  |

In addition, based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts.

Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II(g)(1)(2)(3). Routine repair and maintenance building equipment, roads, vehicles, and grounds.
2. EPA, 40 CFR 6.204(a)(1)(i). Actions at EPA facilities involving routine facility maintenance, repair, grounds keeping; minor rehabilitation, restoration, renovation.
3. Navy, 32 CFR 775.6(f)(8). Routine repair and maintenance of buildings, facilities, vessels, aircraft, and equipment.
4. Department of Energy (DoE), 10 CFR part 1021, Subpart D, Appendix B, B1.3. Routine maintenance/custodial service for buildings, structures,

infrastructure, and equipment. DoE has proposed new NEPA regulations; see Web site <http://nepa.energy.gov/1601.htm>. DOE's proposed regulations do not modify their relevance to NASA's proposed CatEx.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activities under this CatEx would not result in significant environmental impacts and are, therefore, eligible for categorical exclusion. The second CatEx proposed under "Operations and Management Activities" is "Installation or removal of equipment, including component parts, at existing government or private facilities." This is a new CatEx, which NASA is proposing to further clarify the existing "minor construction" CatEx with respect to equipment at NASA facilities. Cost and size of equipment can vary dramatically, but normally, equipment is installed within a new or

existing building or facility, or outside on the walls, roof, or surrounding grounds. Examples of minor construction include, but are not limited to, replacement of boilers and chillers and installation of a nitrogen storage system outside on a small concrete pad in a grassy area adjacent to a building. As is always the case with CatExs, this CatEx would not apply when the proposed action is connected to another action that has the potential, by itself or in conjunction with the equipment action, to cause significant environmental impacts. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation which have been completed and monitored by NASA's environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

| Center            | Date       | Title  |
|-------------------|------------|--|
| 1. MSFC, AL ..... | 09/04/2002 | Replace Cell E Air Handling Units 1 and 2.                                       |
| 2. MSFC, AL ..... | 09/04/2002 | Replace Site Wide High Voltage Oil Switches.                                     |
| 3. JPL, CA .....  | 02/09/2009 | Multiangle Spectropolarimetric Aerosol Characterization.                         |
| 4. LaRC, VA ..... | 10/08/2009 | Install Acoustic Phased Array with Test Section.                                 |
| 5. LaRC, VA ..... | 10/08/2009 | Add Jet Engine Simulator to Wind Tunnel.   |
| 6. KSC, FL .....  | 11/03/2009 | Starfighters Fuel Tank Project 4244.   |
| 7. SSC, MS .....  | 03/19/2010 | Removal of Emergency Generator/Fuel Aboveground Storage Tank from Building 1100. |
| 8. WSTF, NM ..... | 07/26/2010 | Gantry Crane Removal 400 Area.   |

The third proposed CatEx under "Operations and Management Activities" is "Contribution of equipment, software, technical advice, exchange of data, and consultation to other agencies and public and private entities, where such assistance does not control the receiving entity's program,

project, or activity." This is a new CatEx. Examples of activities that would fall under this CatEx include technical advice on implementing a science education activity or on the design or operation of a space launch facility where the advice does not control the design and implementation. Based on

NASA's experience with these types of actions, as documented in the following NASA REC supported by a CatEx, which has been completed and monitored by NASA's environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

| Center           | Date       | Title  |
|------------------|------------|--|
| 1. JPL, CA ..... | 04/09/2009 | Global Differential GPS Technology Transfer Data Exchange. |

Based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. EPA, 40 CFR 6.204(a)(2)(vii). Actions involving providing the provision of providing technical advice to Federal agencies, State and local governments, federally recognized Indian tribes, foreign governments, or public and private entities.
2. Department of Agriculture, 7 CFR 1 b.3(a)(6). Activities which are advisory and consultative to other agencies and

public and private entities, such as legal counseling and representation.

3. Federal Highway Administration, 23 CFR 771.117(c)(16). Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine change in demand.

4. DoE, 10 CFR part 1021, Subpart D, Appendix A, A11. Technical advice and planning assistance to international, national, State, and local organizations. DoE has proposed new NEPA regulations; see Web site <http://nepa.energy.gov/1601.htm>. DoE's proposed regulations do not modify

their relevance to NASA's proposed CatEx.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The fourth proposed CatEx under "Operations and Management Activities" is "NASA ceremonies, commemorative events, and memorial services." NASA enjoys celebrating America's space history. NASA celebrated its 50th Anniversary in 2008 with numerous events for employees

and the public at all of its Centers. Events generally ranged from formal, solemn services at Arlington National Cemetery to honor America's lost astronauts to events such as NASA's participation in the week-long Smithsonian Folk Festival on the

National Mall in Washington, DC. This is a new CatEx. Based on NASA's experience with past ceremonies and commemorative events, which have been documented in the following four NASA RECs and other environmental documentation, which have been

completed and monitored by NASA's environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

| Center           | Date       | Title                                     |
|------------------|------------|---|
| 1. KSC, FL ..... | 10/15/2001 | Expedition 2 Crew Tree Planting Ceremony. |
| 2. KSC, FL ..... | 11/15/2002 | Delta 4 Launch Viewing.                   |
| 3. KSC, FL ..... | 12/22/2008 | 2009 Center All-American Picnic.          |
| 4. KSC, FL ..... | 03/03/2010 | 2010 Center All-American Picnic.          |

In addition, based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II, (b)(11). Ceremonies, funerals, and concerts, including flyovers.

2. Navy, 32 CFR 775.6(f)(6). Military ceremonies.

3. Air Force, 32 CFR part 989, Appendix B, A 2.3.38. Conducting Air Force "open houses" and similar events, including air shows, golf tournaments, and horse shows.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The final proposed CatEx under "Operations and Management Activities" is "Routine packaging, labeling, storage, and transportation of hazardous materials and waste in accordance with applicable Federal, federally recognized Indian tribe, State, or local law or requirement." This is a new CatEx. NASA currently packages, labels, stores and transports hazardous material and waste in accordance with all applicable Federal, State, tribal, and local statutes and regulations. Based on this experience, NASA has determined that these actions do not result in a significant impact to the environment.

Based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II (h)(4). Routine management, to include transportation, distribution, use, storage, treatment, and disposal of solid waste and/or hazardous waste.

2. Navy, 32 CFR 775.6(f)(16). Routine movement, handling, and distribution of materials, including hazardous materials/wastes.

3. Air Force, 32 CFR part 989, Appendix B, A 2.3.28. Routine transporting of hazardous materials and waste in accordance with applicable Federal, State, interstate, and local laws.

4. DoE, 10 CFR part 1021, Subpart D, Appendix B, B 3.4. Transport packaging for radioactive/hazardous material. DoE has proposed new NEPA regulations, see Web site <http://nepa.energy.gov/1601.htm>. DoE's proposed regulations do not modify their relevance to NASA's proposed CatEx.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

*§ 1216.304(d)(3): Research and Development (R&D) Activities including:*

(i) Research, development, and testing in compliance with all applicable Federal, federally recognized Indian

tribe, State, and/or local law or requirements, and Executive orders.

(ii) Use of small quantities of radioactive materials in a laboratory or in the field. Uses include material for instrument detectors, calibration, and other purposes. Materials must be licensed, as required, and properly contained and shielded.

(iii) Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, where such use meets all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders. This applies to lasers used in spacecraft, aircraft, laboratories, watercraft, or outdoor activities.

Under the heading "Research and Development (R&D) Activities," NASA is proposing three CatExs. The first one is "Research, development, and testing in compliance with all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders." This proposed CatEx consolidates five existing R&D CatExs and ensures applicability to the broad range of NASA R&D activities that have minimal or no impact on the environment. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation which have been completed and monitored by NASA's environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

| Center            | Date       | Title  |
|-------------------|------------|--|
| 1. MSFC, AL ..... | 09/04/2002 | Pilot Scale Testing of Remediation Technologies. |
| 2. JPL, CA .....  | 03/15/2006 | Array Prototype: Construct of Operate.           |
| 3. KSC, FL .....  | 07/07/2008 | Post Landing Orion Recovery Test.                |
| 4. LaRC, VA ..... | 10/06/2009 | Develop Air Traffic Management Concepts.         |
| 5. NASA HQ .....  | 12/23/2009 | ARRA-Funded Activities (HQ ID-1119).             |
| 6. GSFC, MD ..... | 04/20/2010 | Operation Ice Bridge.                            |
| 7. LaRC, VA ..... | 05/05/2010 | Integrated Intelligence Flight Deck.             |

In addition, NASA has reviewed activities covered by R&D CatExs used by other Federal agencies, and these other agency activities are similar to some of NASA's R&D activities and thus provide additional support for this proposed NASA CatEx. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section ii(h)(5). Research, testing, and operations conducted at existing closed facilities.

2. EPA, 40 CFR 6.204(a)(2)(iv). Actions relating to or conducted completely within a permanent, existing contained facility such as a laboratory.

3. Air Force, 32 CFR part 989, Appendix B, A 2.3.27. Normal or routine basic and applied scientific research.

NASA recognizes that these other agency examples are generally bounded to existing facilities; however, the nature of NASA's R&D activities is such that it is not practical for NASA to

bound its R&D CatExs to existing facilities or even existing ranges. Instead, NASA has proposed its new "Extraordinary Circumstances" to bound this R&D CatEx, as well as its other CatExs. NASA has performed numerous R&D activities outside existing facilities and ranges, located both on its Centers and off its Centers, with no significant environmental impacts. The broad variety and geographic diversity of NASA's environmentally benign research activities is illustrated by the seven examples of past NASA R&D activities listed in this preamble and by the additional 24 examples included in the NASA NEPA Library on the previously mentioned NASA NEPA Web site at <http://www.nasa.gov/green/nepa/index.html>.

Based on a review of NASA's own R&D experience and the activities covered by other agencies' R&D CatExs, NASA's has determined that its R&D

activity under this CatEx, as bounded by the proposed Extraordinary Circumstances, would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The second proposed CatEx under "Research and Development (R&D) Activities" is "Use of small quantities of radioactive materials in a laboratory or in the field. Uses include material for instrument detectors, calibration, and other purposes. Materials must be licensed, as required, and properly contained and shielded." This is a new CatEx. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation which have been completed and monitored by NASA environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

| Center           | Date       | Title   |
|------------------|------------|---|
| 1. WFF, VA ..... | 05/18/2006 | NASA African Monsoon Multidisciplinary Analysis.      |
| 2. WFF, VA ..... | 05/14/2007 | Tropical Composition, Cloud, Climate Coupling (TC-4). |
| 3. WFF, VA ..... | 03/28/2008 | ARCTAS Mission.                                       |

The third proposed CatEx under "Research and Development (R&D) Activities" is "Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, which meet all applicable Federal, federally recognized Indian tribe, State, and/or local law or

requirements, and Executive orders. This applies to lasers in spacecraft, aircraft, laboratories, watercraft, or outdoor activities." This is a new CatEx. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation, which

have been completed and monitored by NASA environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts. Examples include:

| Center            | Date       | Title                                     |
|-------------------|------------|---|
| 1. GSFC, MD ..... | 06/20/2002 | ICE SAT (Laser Research) EA.              |
| 2. GSFC, MD ..... | 11/19/2007 | Push Broom Laser Altimeter Demonstration. |
| 3. KSC, FL .....  | 02/12/2008 | USCG Laser Test Project.                  |
| 4. LaRC, VA ..... | 10/05/2009 | 1064 nm Pump Laser Transmitter.           |

*§ 1216.304 (d)(4): Real and Personal Property Activities including:*

(i) Acquisition, transfer, or disposal of any personal property, or personal property rights or interests.

(ii) Granting or acceptance of easements, leases, licenses, rights-of-entry, and permits to use NASA-controlled property or any other real property for activities which, if conducted by NASA, would be categorically excluded in accordance with this section. This assumes NASA has included any terms and conditions necessary and any required notices in the transfer documentation, as applicable, to ensure protection of the environment.

(iii) Transfer or disposal of real property or real property rights or interests if the change in use is one which, if conducted by NASA, would be categorically excluded in accordance with this section.

(iv) Transfer of 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) will complete any necessary NEPA review prior to any change in land use.

(v) Acquisition of real property (including facilities) where the land use will not change substantially.

Under the heading "Real and Personal Property Activities," NASA is proposing five CatExs. The first is "Acquisition, transfer, or disposal of any personal property, or personal property rights or interests." This is a new CatEx. Changes in ownership of personal property (such as furnishings, vehicles, office, laboratory, or field supplies and equipment), or interests in personal property do not normally have the potential to significantly affect the environment. Based on past experience with similar actions, NASA has determined that its activity under this proposed CatEx would not result in

significant environmental impact and is, therefore, eligible for categorical exclusion. Based on a review of the activities covered by a similar DoE CatEx (10 CFR part 1021, Subpart D, Appendix A, A7 “Transfer of property, use unchanged”), NASA has further determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Accordingly, based on its own experience and that of DoE, NASA has concluded that its activity under this CatEx would not

result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The second proposed CatEx under “Real and Personal Property Activities” is “Granting or acceptance of easements, leases, licenses, rights-of-entry, and permits to use NASA-controlled property or any other real property for activities which, if conducted by NASA, would be categorically excluded in accordance with this section. This assumes that NASA has included any terms and conditions necessary to

ensure protection of the environment and any required notices in the transfer documentation, as applicable.” This is a new CatEx. Based on NASA’s experience with these types of actions, as documented in the following NASA REC’s and other environmental documentation, which has been completed and monitored by NASA’s environmental professional staff, these actions do not result in individually or cumulatively significant environmental impacts.

| Center            | Date       | Title                                      |
|-------------------|------------|--|
| 1. DFRC, CA ..... | 11/20/2002 | Dryden Aircraft Operations Facility Lease. |
| 2. DFRC, CA ..... | 02/23/2007 | Installation of Flight Termination System. |
| 3. KSC, FL .....  | 10/20/2008 | AT&T Press Site Enhanced Use Lease.        |

In addition, based on a review of the activities covered by other agencies’ CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II (f)(1). Grants or acquisition of leases, licenses, easements, and permits for use of real property or facilities.

2. Navy, 32 CFR 775.6(f)(33). Grants of license, easement, or similar arrangements for the use of existing right-of-way. Air Force, 32 CFR part 989, Appendix B, A 2.3.19. Granting easements, leases, licenses, rights of entry, and permits to use Air Force-controlled property for activities that, if conducted by the Air Force, would be categorically excluded.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The third proposed CatEx under “Real and Personal Property Activities” is “Transfer or disposal of real property or real property rights or interests if the change in use is one which, if conducted by NASA, would be categorically excluded in accordance with this section.” This is a new CatEx. Although NASA does not have project-specific NEPA documentation to include as support for this CatEx, NASA has conducted these types of activities without any significant environmental impact. For example, Goddard Space

Flight Center transferred property to a county as part of a road project which was analyzed in the Goddard Master Plan EA and Finding of No Significant Impact (FONSI).

In addition, based on a review of the activities covered by other agencies’ CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II (f)(6). Disposal of real property (including facilities) by the Army where the reasonably foreseeable use will not change significantly.

2. Navy, 32 CFR 775.6(f)(26)(28). Transfer of real property from the Department of the Navy to another military department or to another Federal agency. Minor land acquisition or disposal.

3. DOE, 10 CFR part 1021, Subpart D, Appendix A, A7. Transfer, lease, disposition, or acquisition of interests in personal property or real property, if property use is to remain unchanged. DOE has proposed new NEPA regulations, see Web site <http://nepa.energy.gov/1601.htm>. Language similar to that found in DOE’s current regulation has been moved to Appendix B 1.24. This modification does not change its relevance to NASA’s proposed CatEx.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The fourth proposed CatEx under “Real and Personal Property Activities” is “Transfer of 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) will complete any necessary NEPA review prior to any change in land use.” This is a new CatEx. Within the Federal real property inventory, NASA is a small land management agency. At numerous NASA Centers, NASA is collocated within or adjacent to, or is a tenant on, a DoD base with no land-expansion capacity. Excess land is typically transferred back to the landowner. Any such land no longer needed by NASA would likely be transferred to DoD. In the rare case that NASA has land to be excessed, as the Federal agent, NASA is required to declare the property excess to GSA. In such situations, NASA’s action with regard to the United States’ real property interest is merely an administrative action, and GSA and/or any receiving agency would conduct a NEPA review for any potential change in use. NASA has one example of a declaration of excess property that was reviewed by NASA and was determined not to require further NEPA action. The following example of NASA’s activity supports this new CatEx because the activity did not have any environmental impacts.

| Center            | Date       | Title  |
|-------------------|------------|--|
| 1. MSFC, AL ..... | 11/14/2007 | Reporting to GSA Excess Property on Santa Susana Field Laboratory. |

In addition, based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts.

Examples include:

1. Army, 32 CFR part 651, Appendix B, Section II (f)(3). Transfer of real property to another military department or to another Federal agency and reporting that property as excess to the GSA.

2. Navy, 32 CFR 775.6(f)(26). Transfer of real property from the Department of the Navy to another military department or to another Federal agency.

3. Air Force, 32 CFR part 989, Appendix B, A 2.3.18. Transfer of administrative control of real property within the Air Force to another military department or to another Federal agency.

4. DoE, 10 CFR part 1021, Subpart D, Appendix A, A7. Transfer, lease, disposition, or acquisition of interests in personal property or real property, if property use is to remain unchanged. DoE has proposed new NEPA regulations, see Web site <http://nepa.energy.gov/1601.html>. Language similar to that found in DoE's current regulation has been moved to Appendix B 1.24. This modification does not change its relevance to NASA's proposed CatEx.

Accordingly, based on its own experience and that of other agencies, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and

is, therefore, eligible for categorical exclusion.

The fifth proposed CatEx under "Real and Personal Property Activities" is "Acquisition of real property (including facilities) where the land use will not change substantially." This is a new CatEx. Although NASA does not have specific NEPA documentation to include as support for this CatEx, NASA has reviewed activities covered by CatExs used by other Federal agencies for similar actions. Based on a review of the activities covered by other agencies' CatExs, NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Accordingly, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion. Examples of other agencies' CatExs include:

1. Army, 32 CFR part 651, Appendix B, Section II (f)(5). Acquisition of real property where the land use will not change substantially.

2. Navy, 32 CFR 775.6(f)(28). Minor land acquisition or disposal where anticipated or proposed land use is similar to existing land use and zoning, both in type and intensity.

3. DOE, 10 CFR part 1021, Subpart D, Appendix A, A7. Transfer, lease, disposition, or acquisition of interests in personal property or real property, if property use is to remain unchanged. DOE has proposed new NEPA regulations, see Web site <http://nepa.energy.gov/1601.html>. Language

similar to that found in DOE's current regulation has been moved to Appendix B 1.24. This modification does not change its relevance to NASA's proposed CatEx.

*§ 1216.304(d)(5): Aircraft and Airfield Activities including:*

(i) Periodic aircraft flight activities, including training and research and development, which are routine and comply with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders.

(ii) Relocation of similar aircraft 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.

Under the heading "Aircraft and Airfield Activities," NASA is proposing two CatExs. The first proposed CatEx is "Periodic aircraft flight activities, including training and research and development, which are routine and comply with applicable Federal, federally recognized Indian tribe, State and/or local laws or requirements and Executive orders." This is a new CatEx. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation, which have been completed and monitored by NASA's environmental staff, these actions do not result in individually or cumulatively significant environmental impacts.

| Center            | Date       | Title  |
|-------------------|------------|--|
| 1. MSFC, AL ..... | 10/31/2007 | Compliance for Lunar Reconnaissance Orbiter. |
| 2. DFRC, CA ..... | 11/20/2007 | Dryden Aircraft Operations Facility.         |
| 3. SSC, MS .....  | 07/03/2010 | Subscale Diffuser Test.                      |

In addition, based on a review of the activities covered by the Army's CatEx (32 CFR part 651, Appendix B, Section II (i)(2) "Flying activities in compliance with FAA regulations and in accordance with normal flight patterns."), NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Accordingly, based on its own experience and that of

the Army, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

The second proposed CatEx under this heading is "Relocation of similar aircraft 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." This is a new CatEx. Based on NASA's experience with these types of actions, as documented in the following NASA RECs and other environmental documentation, which have been completed and monitored by NASA's environmental staff, these actions do not result in individually or cumulatively significant environmental impacts.



| Center            | Date       | Title  |
|-------------------|------------|--|
| 1. DFRC, CA ..... | 11/20/2007 | Dryden Aircraft Operations Facility.                   |
| 2. DFRC, CA ..... | 07/21/2009 | U.S. Army Twin Otter Aircraft Operating out of Dryden. |
| 3. KSC, FL .....  | 11/10/2009 | Relocate Helicopter Operation.                         |

In addition, based on a review of the activities covered by the Air Force’s CatEx (32 CFR part 989, Appendix B, A 2.3.31 “Relocating a small number of aircraft to an installation with similar aircraft that does not result in a significant increase of total flying hours or aircraft operations.”), NASA has determined that it would be conducting similar activities, under similar circumstances, and with similar environmental impacts. Accordingly, based on its own experience and that of the Air Force, NASA has concluded that its activity under this CatEx would not result in significant environmental impacts and is, therefore, eligible for categorical exclusion.

**Extraordinary Circumstances**

NASA is proposing “extraordinary circumstances” to mean “those circumstances \* \* \* that may cause a significant environmental effect such that an action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded.” This meaning is consistent with CEQ regulations at § 1508.4.

NASA has identified the following extraordinary circumstances which must be considered as part of the environmental review process. NASA will prepare an EA or an EIS when a proposed action involves unmitigated extraordinary circumstances. All seven of the extraordinary circumstances are new to NASA’s NEPA regulations. They identify criteria which normally require either an EA or an EIS. Extraordinary circumstances precluding the use of CatExs occur when the proposed action:

1. Has a reasonable likelihood of having individually or cumulatively significant effects on public health, safety, or the environment.
2. Imposes uncertain or unique environmental risks.
3. Is of significantly greater scope or size than is normal for this category of action.
4. Has a reasonable likelihood of violating Federal, federally recognized Indian tribe, State, or local law or requirements imposed for the protection of the environment.
5. Involves effects on the quality of the environment that are likely to be environmentally controversial.
6. May adversely affect environmentally sensitive resources, such as, but not limited to, federally

listed threatened 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), the Coastal Zone Management Act (CZMA).

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

NASA believes there is a relationship between the extraordinary circumstances and the criteria for actions that generally require EAs or EISs. The intent is to standardize the essential concepts and combine the criteria into a consolidated set of extraordinary circumstances applicable to all NASA actions subject to NEPA. The extraordinary circumstances are not intended to be a listing of requirements for preparing EAs or EISs. Rather, they are to be used to determine whether a categorical exclusion applies to a proposed action. What constitutes a “unique” environmental risk in the second extraordinary circumstance can apply to a wide range of situations. For example, it could be a small construction project that would normally be categorically excluded, but a threatened bird species has been known to nest in the general area. In such a situation, the Center may decide that preparation of an EA is warranted. Similarly, what could be “environmentally controversial” under paragraph 5 of the extraordinary circumstances can also apply to a wide range of actions. An example could be that a proposed action involves science, which is not conclusive as to its impacts or effects, and, as a result, is considered environmentally controversial by the public. If initial evaluation concludes that a categorical exclusion cannot be applied due to an extraordinary circumstance, the NASA Responsible Official may prepare an EA to determine whether a FONSI or an EIS is the appropriate NEPA document for the

project, or the Responsible Official may proceed directly with preparing an EIS.

**Actions Normally Requiring an EIS**

NASA has identified five categories of Agency actions that typically require an EIS. These actions, under the existing regulation, are found at § 1216.305 (c)(1)(2) and (3) which is currently titled, *Criteria for Actions Requiring Environmental Assessments*. The proposed rule provides a stand-alone section, § 1216.308, titled, *Actions Normally Requiring an EIS*. The five types of typical NASA actions that normally require an EIS include two actions from the current regulation, which have been modified to update and provide clarity, and three new types of actions. These five actions are:

1. Development and operation of new launch vehicles or space transportation systems.
2. Development and operation of a space flight project/program which would launch and operate a nuclear reactor or radioisotope power systems and devices using a total quantity of radioactive material greater than the quantity for which the NASA Nuclear Flight Safety Assurance Manager may grant nuclear safety launch approval (i.e., a total quantity of radioactive material for which the A2 Mission Multiple (see definitions in Appendix A) is greater than 10)).
3. Development and operation of a space flight project/program which would return samples to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, planetary moons, etc.), which would likely receive a Restricted Earth Return categorization (as defined in Appendix A) from the NASA Planetary Protection Office or the NASA Planetary Protection Subcommittee.
4. Substantial modification of a NASA facility’s master plan in a manner expected to result in significant effect(s) on the quality of the human environment.
5. Substantial construction projects expected to result in significant effect(s) on the quality of the human environment, when such construction and its effects are not within the scope of an existing master plan and EIS.

**Other Modifications and Additions**

NASA is amending its procedures for implementing the requirements of

NEPA, 42 U.S.C. 4321–4347. These proposed regulations, like NASA's existing NEPA regulations, are a supplement to the CEQ regulations implementing NEPA. Consistent with this fact, these proposed regulations were drafted with the objective of minimizing repetition of requirements already contained in the CEQ regulations and with the understanding that these NASA-specific regulations would be applied with (and be bounded by) the CEQ regulations.

The proposed rule includes a number of additional modifications, deletions, and additions that consolidate, streamline, and clarify NASA's procedures for the implementation of NEPA. These include the following:

1. Section 1216.300, Scope, adds the express adoption by NASA of the CEQ regulations implementing NEPA.

2. The definition of key terms has been moved to Appendix A of 14 CFR 1216.3.

3. Section 1216.303, NEPA Process in NASA Planning and Decision-Making, has been updated and streamlined.

4. Section 1216.304, Categorical Exclusions, NASA has added the requirement that CatExs be reviewed every seven years, as specified in the CEQ's November 2010 guidance on categorical exclusion under NEPA.

5. Section 1216.305, Criteria for Actions Requiring Environmental Assessments, has been expanded from the previous rule and is now specifically for EAs only. It identifies five specific actions that normally require an EA.

6. Section 1216.308, Supplemental EAs and EISs have been added to recognize the potential requirement for supplemental NEPA documentation in accordance with CEQ regulations.

7. Section 1216.310, Classified Actions, has been modified to reflect current NASA policy.

8. Section 1216.311, Emergency Responses, is a new section which recognizes appropriate NEPA response in an emergency situation.

#### Procedural Requirements

NASA's proposed rule complies with and addresses the following procedural requirements and policies as described in more detail below:

##### *The Regulatory Flexibility Act (January 1981)*

The Regulatory Flexibility Act, 5 United States Code (U.S.C.) 601 *et seq.*, requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory

flexibility analysis describing the regulation's impact on small entities.

NASA has considered the impact of the proposed rule under the Regulatory Flexibility Act and certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

##### *The Paperwork Reduction Act (December 1980)*

This proposed rule does not require information collection as defined under the Paperwork Reduction Act. Therefore, this rule does not constitute a new information collection system requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

##### *Executive Order 13132, Federalism (August 1999)*

This proposed rule does not have significant Federalism effects or implications; therefore, a Federalism assessment under Executive Order 13132 is not required. The policies and procedures will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No intrusion on State policy or administration is expected if roles or responsibilities of Federal or State governments will not change and fiscal capacity will not be substantially affected.

##### *The Unfunded Mandates Reform Act (March 1995)*

This proposed rule will not significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*). The rule does not require any additional management responsibilities. Further, this rule will not produce a Federal mandate of \$100 million or greater in any year; and thus, it is not a significant regulatory action under the Unfunded Mandates Reform Act. This proposed rule is not expected to have significant economic impacts nor will it impose any unfunded mandates on other Federal, State, or local government agencies to carry out specific activities.

##### *Executive Order 12875, Enhancing the Intergovernmental Partnership (October 1993)*

This proposed rule does not impose non-statutory unfunded mandates on small governments and is not subject to

the requirements of Executive Order 12875.

##### *Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (February 1994)*

Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and/or low-income populations. In developing this proposed rule in compliance with Executive Order 12898, NASA determined that the proposed rule did not raise any environmental justice concerns.

##### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (November 2000)*

Executive Order 13175 requires NASA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have Indian tribal implications, as specified in Executive Order 13175.

NASA's proposed rule imposes no new regulatory obligations on tribes. It will not have substantial direct effects on tribes, on the relationship between the national Government and tribes, or on the distribution of power and responsibilities between the national Government and tribes. These proposed regulations do not preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed rule.

##### *Essential Fish Habitat (December 2006)*

NASA has analyzed this proposed rule in accordance with Section 305 (b) of the Magnuson-Stevens Fishery Conservation and Management Act (18 U.S.C. 1855) and determined that the proposed rule will not affect the essential fish habitat of federally managed species; and, therefore, an essential fish habitat consultation on this rule is not required.

##### *Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks (April 1997)*

Executive Order 13045 applies to any rule that is determined to be "economically significant," as defined

under Executive Order 12866, and concerns an environmental health or safety risk that may have a disproportionate effect on children. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard to mitigate health; it does not create a safety risk; and it is not “economically significant.”

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 2001)*

This proposed rule is not a “significant energy action” as defined in Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule does not impose new regulatory obligations related to energy supply, distribution, or use of energy on NASA, State or local governments, tribes, or individuals. Therefore, NASA has concluded that this proposed rule is not likely to have any adverse energy effects.

*Executive Order 13212, Actions To Expedite Energy-Related Projects (May 2001)*

Executive Order 13212 requires agencies to expedite energy-related projects by streamlining internal processes while maintaining safety, public health, and environmental protections. The proposed rule is in conformance with this requirement as it promotes the streamlining of the existing NEPA process within NASA.

*Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (March 1988)*

This proposed rule is issued with respect to NEPA and, therefore, establishes NASA’s responsibilities for early integration of environmental consideration into planning and decision making. This proposed rule is not expected to impact the provisions of Executive Order 12630.

*Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management (January 2007)*

Executive Order 13423 requires agencies to implement environmental management systems and improve energy efficiency. NASA is developing environmental management systems and energy efficiency programs in compliance with this Executive order. The proposed rule furthers these objectives and goals by ensuring that NEPA compliance is done in accordance

with the policy set forth in the Executive order.

*Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (October 2009)*

Executive Order 13514 requires agencies to prepare and annually update an integrated Strategic Sustainability Performance Plan, which will prioritize Agency actions based on life-cycle return on investment. In addition, it requires agencies to establish greenhouse gas emission reduction targets and report annually on their progress in achieving these goals. The Executive order also requires agencies to improve water use efficiency and management and promote pollution prevention and elimination of waste. Sustainable building design, construction, operation, and management are also required for future Federal buildings. The proposed rule furthers the objectives and goals by ensuring that NEPA compliance is done in accordance with the policy set forth in the Executive order.

*Executive Order 13563 and Executive Order 12866*

Executive Orders 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

For the reasons given in the preamble, NASA proposes to amend 14 CFR part 1216 by revising subpart 1216.3 to read as follows:

**PART 1216—ENVIRONMENTAL QUALITY**

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

Sec.

- 1216.302 Responsibilities.
- 1216.303 NEPA process in NASA planning and decision making.
- 1216.304 Categorical exclusions.

- 1216.305 Actions requiring environmental assessments.
- 1216.306 Actions normally requiring an EIS.
- 1216.307 Programmatic EAs, and EISs, and tiering.
- 1216.308 Supplemental EAs and EISs.
- 1216.309 Mitigation and monitoring.
- 1216.310 Classified actions.
- 1216.311 Emergency responses.

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

*Authority:* The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 *et seq.*); The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508).

**§ 1216.300 Scope.**

This subpart implements NEPA, setting forth NASA’s policies and procedures for the early integration of environmental considerations into planning and decision making. Through this subpart, NASA adopts the CEQ regulations implementing NEPA (40 CFR parts 1500–1508) and supplements those regulations with this subpart 1216.3, for actions proposed by NASA that are subject to NEPA requirements. This regulation is to be used in conjunction with the CEQ regulations. Consistent with the CEQ regulations at 40 CFR 1500.3, no trivial violation of this part shall give rise to any independent cause of action.

**§ 1216.301 Applicability.**

This subpart applies to all organizational elements of NASA.

**§ 1216.302 Responsibilities.**

(a) The NASA Senior Environmental Official (SEO) (as defined in Appendix A to this subpart) is responsible for overseeing and guiding NASA’s integration of NEPA into the Agency’s planning and decision making. The SEO, with the assistance of the Office of the General Counsel (OGC), is responsible for developing NASA NEPA regulations and maintaining up-to-date Agency-wide NEPA guidance that fully integrates NEPA analysis into Agency planning and decision-making processes. The SEO shall monitor this process to ensure that these regulations and the associated Agency guidance are achieving their purposes. In addition, the NASA SEO is responsible for coordinating with other Federal agencies and the CEQ and consolidating and transmitting NASA’s comments on

EISs and other NEPA documentation prepared by other Federal agencies:

(1) The NASA Headquarters/Environmental Management Division (HQ/EMD) has delegated the SEO's overall responsibility of implementing NEPA functions and guiding NASA's integration of NEPA into the Agency's planning and decision making for all NASA activities. The HQ/EMD provides advice and consultation to all NASA entities in implementing their assigned responsibilities under NEPA.

(2) Each NASA Center has an environmental management office that guides and supports the working-level functions of the NEPA process, such as evaluating proposed actions; developing, reviewing, and approving required documentation; and advising project managers.

(b) The Responsible Official shall ensure that planning and decision making for each proposed Agency action complies with these regulations and with Agency NEPA policy and guidance provided by the SEO, HQ/EMD, and the Center's environmental management office. For facility programs and projects, the Responsible Official is the individual responsible for establishing, developing, and maintaining the institutional capabilities required for the execution of programs and projects (e.g., Center Director, facility manager). For other programs and projects, (e.g., space flight programs/projects, R&D programs/projects) the Responsible Official is the NASA official responsible for the formulation and implementation of the program or project (e.g., The Associate Administrator for Science Mission Directorate, Center Director).

(c) NASA must comply with this regulation 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. The Responsible Official(s) for such action(s), in consultation with HQ/EMD and/or the Center's environmental management office, will determine the type of environmental information needed from the non-Federal party and the extent of the non-Federal party's participation in the necessary NEPA process.

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

(a) NEPA requires the systematic examination of the environmental consequences of implementing a proposed Agency action. Full integration of the NEPA process with NASA project and program planning

improves Agency decisions and ensures that:

(1) Planning and decision making support NASA's strategic plan commitment to sustainability and environmental stewardship and comply with applicable environmental statutes, regulations, and policies.

(2) The public is appropriately engaged in the decision-making process.

(3) Procedural risks and delays are minimized.

(b) Determining the appropriate level of NEPA review and documentation for a proposed NASA action will depend upon the scope of the action and the context and intensity of the reasonably foreseeable environmental impacts.

(c) The environmental impacts of a proposed Agency action must be considered, along with technical, economic, and other factors that are reasonably foreseeable, beginning in the early planning stage of a proposed action. NASA will take no action which would have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of its NEPA review.

#### **§ 1216.304 Categorical exclusions.**

(a) Categorical Exclusions (CatExs) are categories of Agency actions with no individually or cumulatively significant impact on the human environment and for which neither an EA nor an EIS is required. The use of a CatEx is intended to reduce paperwork, improve Government efficiency, and eliminate delays in the initiation and completion of proposed actions having no significant impact.

(b) A proposed action may be categorically excluded if the action fits within a category of actions eligible for exclusion (such categories are listed in paragraph (d) of this section), and the proposed action does not involve any extraordinary circumstances as described in paragraph (c) of this section.

(c) Extraordinary circumstances that may preclude the use of CatExs occur when the proposed action:

(1) Has a reasonable likelihood of having (individually or cumulatively) significant impacts on public health, safety, or the environment;

(2) Imposes uncertain or unique environmental risks;

(3) Is of significantly greater scope or size than is normal for this category of action;

(4) Has a reasonable likelihood of violating Federal, federally recognized Indian tribe, State, and/or local law or requirements imposed for the protection of the environment;

(5) Involves impacts on the quality of the environment that are likely to be environmentally controversial;

(6) May adversely affect environmentally 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), the Coastal Zone Management Act (CZMA); and

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

(d) Specific NASA actions meeting the criteria for being categorically excluded from the requirements for EAs and EISs are as follows:

(1) Administrative Activities including:

(i) Personnel actions, organizational changes, and procurement of routine goods and services.

(ii) Issuance of procedural rules, manuals, directives, and requirements.

(iii) Program budget proposals, disbursements, and transfer or reprogramming of funds.

(iv) Preparation of 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, studies, and field studies, including water sampling, cultural resources surveys, biological surveys, geologic surveys, modeling or simulations, and routine data collection and analysis activities.

(vi) Preparation and dissemination of information, including document mailings, publications, classroom materials, conferences, speaking engagements, Web sites, and other educational/informational activities.

(vii) Software development, data analysis, and/or testing, including computer modeling.

(viii) Interpretations, amendments, and modifications to contracts, grants, or other awards.

(2) Operations and Management Activities including:

(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, such as space tracking and data systems.

(ii) Installation or removal of equipment, including component parts, at existing Government or private facilities.

(iii) Contribution of equipment, software, technical advice, exchange of data, and consultation to other agencies and public and private entities, where such assistance does not control a receiving entity's program, project, or activity.

(iv) NASA ceremonies, commemorative events, and memorial services.

(v) Routine packaging, labeling, storage, and transportation of hazardous materials and wastes, in accordance with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements.

(3) Research and Development (R&D) Activities including:

(i) Research, development, and testing in compliance with all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements and Executive orders.

(ii) Use of small quantities of radioactive materials in a laboratory or in the field. Uses include material for instrument detectors, calibration, and other purposes. Materials must be licensed, as required, and properly contained and shielded.

(iii) Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, where such use meets all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders. This applies to lasers used in spacecraft, aircraft, laboratories, watercraft, or outdoor activities.

(4) Real and Personal Property Activities including:

(i) Acquisition, transfer, or disposal of any personal property, or personal property rights or interests.

(ii) Granting or acceptance of easements, leases, licenses, rights-of-entry, and permits to use NASA-controlled property, or any other real property, for activities which, if conducted by NASA, would be categorically excluded in accordance with this section. This assumes that NASA has included any required notices in transfer documentation and any terms and conditions necessary to

ensure protection of the environment, as applicable.

(iii) Transfer or disposal of real property or real property rights or interests if the change in use is one which, if conducted by NASA, would be categorically excluded in accordance with this section.

(iv) Transfer of 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) will complete any necessary NEPA review prior to any change in land use.

(v) Acquisition of real property (including facilities) where the land use will not change substantially.

(5) Aircraft and Airfield Activities including:

(i) Periodic aircraft flight activities, including training and research and development, which are routine and comply with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders.

(ii) Relocation of similar aircraft 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.

(e) The Responsible Official shall review the proposed action in its early planning stage and will consider the scope of the action and the context and intensity of any environmental impacts to determine whether there are extraordinary circumstances that could result in environmental impacts. If extraordinary circumstances exist, the Responsible Official will either withdraw the proposed action or initiate an EA or EIS.

(f) The NASA SEO will review the categorical exclusions at least every seven years, in accordance with CEQ guidance, to determine whether modifications, additions, or deletions are appropriate, based upon NASA's experience. Recommendations for modifications, additions, or deletions shall be submitted to the SEO for consideration and informal discussion with the CEQ.

#### **§ 1216.305 Actions requiring environmental assessments.**

(a) The Responsible Official will prepare an EA when a proposed action cannot be categorically excluded, and

the proposed action is not expected to result in impacts that require analysis in an EIS. The Responsible Official will consider the scope of the action and the context and intensity of any environmental impacts when determining whether to prepare an EA.

(b) Typical NASA actions normally requiring an EA include:

(1) Specific spacecraft development and space flight projects/programs (as defined in Appendix A to this subpart).

(2) Actions altering the ongoing operations at a NASA Center which could lead directly, indirectly, or cumulatively to substantial natural or physical environmental impacts.

(3) Construction or modifications of facilities which are not minor.

(4) Proposed actions that are expected to result in significant changes to established land use.

(5) A space flight project/program that would return extraterrestrial samples to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, and planetary moons), which would likely receive an Unrestricted Earth Return categorization (as defined in Appendix A) from NASA's Planetary Protection Office (PPO) or the NASA Planetary Protection Subcommittee prior to the return of samples to the Earth.

#### **§ 1216.306 Actions normally requiring an EIS.**

(a) NASA will prepare an EIS for actions with the potential to significantly impact the quality of the human environment, including actions for which an EA analysis demonstrates that significant impacts will potentially occur which will not be reduced or eliminated by changes to the proposed action or mitigation of its potentially significant impacts.

(b) Typical NASA actions normally requiring an EIS include:

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

(2) Development and operation of a space flight project/program which would launch and operate a nuclear reactor or radioisotope power systems and devices using a total quantity of radioactive material greater than the quantity for which the NASA Nuclear Flight Safety Assurance Manager may grant nuclear safety launch approval (*i.e.*, a total quantity of radioactive material for which the A2 Mission Multiple (see definitions in Appendix A) is greater than 10)).

(3) Development and operation of a space flight project/program which would return samples to Earth from solar system bodies (such as asteroids,

comets, planets, dwarf planets, and planetary moons), which would likely receive a Restricted Earth Return categorization (as defined in Appendix A) from the NASA Planetary Protection Office or the NASA Planetary Protection Subcommittee.

(4) Substantial modification of a NASA facility's master plan in a manner expected to result in significant effect(s) on the quality of the human environment.

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

#### **§ 1216.307 Programmatic EAs, and EISs, and tiering.**

NASA encourages the analysis of actions at the programmatic level for those programs similar in nature or broad in scope. Programmatic NEPA analyses may take place in the form of an EA or EIS. These documents allow "tiering" of NEPA documentation for subsequent or specific actions.

#### **§ 1216.308 Supplemental EAs and EISs.**

As detailed in CEQ regulations, supplemental documentation may be required for previous EAs or EISs (see 40 CFR 1502.9). If changed circumstances require preparation of a supplemental EA or EIS, such document will be prepared following the same general process as the original EA or EIS. No new scoping is required for a supplemental EIS; however, NASA may choose to conduct scoping.

#### **§ 1216.309 Mitigation and monitoring.**

When the analysis proceeds to an EA or EIS and mitigation measures are selected to avoid or reduce environmental impacts, such mitigation measures will be identified in the EA/FONSI or the EIS Record of Decision (ROD). NASA will implement mitigation measures (including adaptive management strategies, where appropriate) consistent with applicable FONSI and/or RODs and will monitor their implementation and effectiveness. The Responsible Official will ensure that funding requests for such mitigation measures are included in the program or project budget.

#### **§ 1216.310 Classified actions.**

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

(b) When classified information can reasonably be separated from other information and a meaningful

environmental analysis can be produced, unclassified documents will be prepared and processed in accordance with these regulations. Classified portions will be kept separate and provided to properly cleared reviewers and decision makers in the form of a properly classified document that meets the requirements of these regulations to the extent permitted, given such classification.

#### **§ 1216.311 Emergency responses.**

(a) When the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation, in accordance with the provisions in sections 305 and 307 of this subpart, then the following provisions apply:

(1) The Responsible Official may take urgently needed actions that are necessary to control the immediate impacts of the emergency needed to mitigate harm to life, property, or resources. When taking such actions, the Responsible Official shall, to the extent practical, mitigate foreseeable adverse environmental impacts.

(2) At the earliest practicable time, the Responsible Official shall also notify the SEO of the emergency situation and the action(s) taken. The SEO will determine the appropriate NEPA action associated with the urgent actions taken as a result of the emergency. If the urgent actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

(b) If the Responsible Official proposes emergency actions which continue beyond the urgent actions taken as a result of the emergency, and these actions are not categorically excluded, the Responsible Official will consult with the SEO to determine the appropriate level of NEPA compliance. If continuation of the emergency actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

#### **Appendix A to Subpart 1216.3**

##### **Acronyms and Definitions**

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  
EIS Environmental Impact Statement  
FONSI Finding of No Significant Impact  
FR Federal Register

GSA General Services Administration  
NEPA National Environmental Policy Act  
NHPA National Historic Preservation Act  
SEO Senior Environmental Official  
OGC Office of the General Counsel  
PPO Planetary Protection Office  
ROD Record of Decision  
U.S.C. United States Code

##### **Definitions**

1. A2 Mission Multiple—The A2 Mission Multiple is a calculated value based on the total amount of radioactive material being launched. This value is used in defining the level of review and approval required for launch.

2. Earth Return Mission (also known as a Sample Return)—A subcategory of missions that would collect extraterrestrial materials from solar system bodies and return them to Earth.

3. NASA Senior Environmental Official—The Senior NASA Headquarters Official responsible for providing executive and functional leadership for environmental compliance. As of January 1, 2011, the SEO is the Assistant Administrator for Strategic Infrastructure.

4. Restricted Earth Return—A subcategory of Earth Return Missions which requires additional measures to ensure that any potential indigenous life form would be contained so that it could not impact humans or Earth's environment.

5. Space Flight Projects/Programs—Those NASA actions that develop products intended for use in space and/or that support ground and space operations for products in space.

6. Unrestricted Earth Return—NASA Procedural Requirements define this as a subcategory of Earth Return Missions that would collect extraterrestrial materials from solar system bodies (deemed by scientific opinion to have no indigenous life forms) and return those samples to Earth. No planetary protection measures are required for the inbound (return to Earth) phase of the mission.

Dated: July 14, 2011.

**Charles F. Bolden, Jr.,**

*Administrator, National Aeronautics and Space Administration.*

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## **OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE**

### **32 CFR Part 1701**

#### **Privacy Act of 1974: Implementation**

**AGENCY:** Office of the Director of National Intelligence.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of the Director of National Intelligence (ODNI) proposes to exempt six new systems of records from certain provisions of the Privacy Act. In addition, the ODNI proposes to invoke a subsection of the Privacy Act