

**(i) New Requirement: AFM Revision for Non-Radio Altimeter Tolerant Airplanes**

For non-radio altimeter tolerant airplanes, do the actions specified in paragraphs (i)(1) and (2) of this AD.

(1) On or before June 30, 2023, revise the Limitations Section of the existing AFM to

include the information specified in figure 4 to paragraph (i) of this AD. This may be done by inserting a copy of figure 4 to paragraph (i) of this AD into the existing AFM. Incorporating the AFM revision required by this paragraph terminates the AFM revision required by paragraph (h) of this AD.

(2) Before further flight after incorporating the limitations specified in figure 4 to paragraph (i) of this AD, remove the AFM revision required by paragraph (h) of this AD. Figure 4 to paragraph (i)—*AFM Revision for Non-Radio Altimeter Tolerant Airplanes*

**(Required by AD 20\*\*-\*\*-\*\*)****Approaches and Landings in the Presence of Radio Altimeter 5G C-Band Interference**

Due to the presence of 5G C-Band wireless broadband interference, dispatching or releasing to airports, and approaches or landings on runways, in the contiguous U.S. airspace is prohibited.

**(j) New Requirement: AFM Revision for Radio Altimeter Tolerant Airplanes**

For radio altimeter tolerant airplanes, do the actions specified in paragraphs (j)(1) and (2) of this AD.

(1) On or before June 30, 2023, revise the Limitations Section of the existing AFM to

include the information specified in figure 5 to paragraph (j) of this AD. This may be done by inserting a copy of figure 5 to paragraph (j) of this AD into the existing AFM. Incorporating the AFM revision required by this paragraph terminates the AFM revision required by paragraph (h) of this AD.

(2) Before further flight after incorporating the limitations specified in figure 5 to paragraph (j) of this AD, remove the AFM revision required by paragraph (h) of this AD. Figure 5 to paragraph (j)—*AFM Revision for Radio Altimeter Tolerant airplanes*

**(Required by AD 20\*\*-\*\*-\*\*)****Approaches and Landings in the Presence of Radio Altimeter 5G C-Band Interference**

Due to the presence of 5G C-Band wireless broadband interference, dispatching or releasing to airports, and approaches or landings on runways, in the contiguous U.S. airspace is prohibited unless operating at a 5G C-Band mitigated airport as identified in an FAA *Domestic Notice*.

**(k) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Operational Safety Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: [AMOC@faa.gov](mailto:AMOC@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) AMOCs approved for AD 2021-23-12, Amendment 39-21810 (86 FR 69984, December 9, 2021) providing relief for specific radio altimeter installations are approved as AMOCs for the requirements specified in paragraph (h) of this AD until June 30, 2023.

**(l) Related Information**

For more information about this AD, contact Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 817-222-5390; email: [operationalsafety@faa.gov](mailto:operationalsafety@faa.gov).

**(m) Material Incorporated by Reference**

None.

Issued on April 28, 2023.

**Michael Linegang,**

*Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****14 CFR Part 1216**

**[Document Number-23-038; Docket Number-NASA-2022-0005]**

**RIN 2700-AE56**

**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) is proposing to amend and update its regulations for implementing the National Environmental Policy Act of 1969 (NEPA). The proposed amendments would update 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 proposed rule incorporates updates to NASA's CatExs based on that review.

**DATES:** Submit comments on or before July 3, 2023.

**ADDRESSES:** You may send comments, identified by 2700-AE56 to the Federal e-Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions for sending comments. If access to the website is not feasible, NASA welcomes mailed comments to NASA Rulemaking Comments, Environmental Management Division, Suite 2U82, 300 E Street SW, Washington, DC 20546. As the security screening process may delay mail sent through the U.S. Postal Service, NASA encourages electronic submittal. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment, including your PII, may be made publicly available at any time. While you can request to withhold your PII from public review as part of the overall comment submittal, NASA cannot guarantee the execution of such a request.

**FOR FURTHER INFORMATION CONTACT:** Tina Norwood, (202) 358-7324, [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 all Federal agencies to assess the environmental impact of their actions pursuant to 42 U.S.C. 4332(2)(C). The Council on Environmental Quality (CEQ) has issued regulations at 40 CFR parts 1500 through 1508 (CEQ regulations) implementing NEPA that are binding on Federal agencies. On July 16, 2020, 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, 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 (E.O.) 13990 of January 20, 2021, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, and E.O. 14008 of January 27, 2021, Tackling the Climate Crisis at Home and Abroad, 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 proposing 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 rulemaking process.

NASA's NEPA regulations are codified in 14 CFR 1216.3 (Procedures for Implementing the National Environmental Policy Act). NASA consulted with CEQ during the development of these proposed updated procedures and prior to their publication in the **Federal Register** (40 CFR 1507.3). These regulations would 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 Executive Order 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 proposed 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) would be updated to reflect the revised updated NASA regulations and posted on the website. Consistent with the coordination requirement of 40 CFR 1507.3, NASA consulted with CEQ throughout the development of this proposed rule.

**Introduction**

NASA is proposing to amend its regulations for implementing the requirements of NEPA to (1) better align with the Agency's current and near-future actions, (2) 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, (3) provide more concise descriptions of NASA actions and more specific CatExs to ensure appropriate application and tracking by NASA, and 4) ensure consistency with EOs and Presidential Memoranda (e.g., Presidential Memorandum on Launch of Spacecraft Containing Space Nuclear Systems issued August 20, 2019) issued since the last update to NASA's procedures. The proposed amendments are designed to assist decision makers across NASA with a wide array of missions and activities that include space exploration and Earth observation missions, aeronautics research, launch facilities and activities, sounding rocket and balloon campaigns, field campaigns, and facilities construction and maintenance activities.

The proposed amendments would update existing CatExs and add nine new CatExs, amend existing actions normally requiring an EA and add a new action normally requiring an EA, amend existing actions normally requiring an environmental impact statement (EIS), and include other amendments. These changes are described later in this notice.

These proposed amendments to NASA's NEPA procedures incorporate and supplement CEQ's NEPA implementing regulations at 40 CFR parts 1500 through 1508. NASA drafted these procedures to minimize repetition with CEQ regulations and with the understanding that these NASA-specific regulations would be applied in tandem with the CEQ regulations. The terminology used in this Preamble and the proposed amendments include

many words and phrases that are specifically defined in either NEPA or the CEQ regulations found in 40 CFR 1508.1.

### Development Process

In 2018, NASA Environmental Management Division (HQ/EMD) formed a working group to review 14 CFR part 1216, subpart 1216.3, including listed CatExs. The members comprising the working group were current NASA professionals with numerous years of NEPA planning and compliance history. Several of the members served on the working group for the 2012 revision of NASA's NEPA regulations. A summary of the working group members' qualifications is available on the NASA NEPA Library website: <https://www.nasa.gov/emd/nepa> (under 2021 NEPA Regulation Update).

In accordance with CEQ's regulations and its 2010 CatEx guidance, "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act," the working group reviewed each existing CatEx against NASA's existing policies, procedures, programs, and mission to determine if they were current and appropriate. The working group also reviewed the 2018 CEQ comprehensive list of Federal agencies' CatExs and identified other agencies' CatExs for activities that are similar in nature, scope, and impact on the human environment to those activities conducted by NASA. Based on this benchmarking of other Federal agencies' CatExs and review of their administrative records, the working group recommended NASA add three CatExs to § 1216.304(d). The working group also recommended amending several existing NASA CatExs to clarify and better define the actions and to ensure NASA consistently applies and tracks CatEx use. Concurrently, the working group reviewed NASA's existing extraordinary circumstances to ensure that they adequately account for those situations and settings in which a proposed new or revised CatEx may not be applied, and NASA must prepare an EA or EIS to support Agency action.

In addition to reviewing NASA's CatExs and extraordinary circumstances, the working group reviewed NASA actions normally requiring an EA or EIS to determine if the level of analysis is appropriate and if additional actions should be added. The review considered NASA's current mission and routinely implemented actions, past experiences, and past NEPA reviews (EAs and EISs). The working group recommended adjusting

the level of analysis for several actions from EIS to EA and from EA to CatEx because NASA has reviewed the environmental effects of each of the actions and found them not to be significant.

The working group developed a draft proposed rule, then distributed the draft to the NEPA Managers at the ten NASA Centers and component facilities, and to other environmental professionals and stakeholders within NASA, for review and feedback. NASA also consulted with CEQ during the development process to ensure the proposed changes to 14 CFR part 1216, subpart 1216.3, would meet NEPA requirements.

### Responsibilities and Implementation Process

NASA proposes to designate the Assistant Administrator, Office of Strategic Infrastructure, within the Mission Support Directorate (MSD), as the NASA Senior Agency Official (SAO). The SAO would be responsible for establishing overall Agency NEPA compliance policy and implementing regulations for NASA, including resolving implementation issues and generally providing oversight of NASA's NEPA program. The proposed updates would incorporate the designation of NASA's SAO and would articulate the SAO's roles and responsibilities.

The NASA Senior Environmental Official (SEO) would be responsible for implementing NASA's NEPA compliance program; including all regulations, policy directives, and procedural requirements; and maintaining up-to-date Agency-wide NEPA program guidance that fully integrates NEPA analysis into Agency planning and decision-making processes. The SEO is the Director, Environmental Management Division, within the Office of Strategic Infrastructure. The NASA NEPA Manager, HQ/EMD would be delegated the responsibility for overseeing the implementation of NEPA by providing guidance and support to the Mission Directorates and NEPA Managers at ten NASA Centers and component facilities that oversee field-level NEPA compliance at their facilities. The responsibility for NEPA compliance resides with the applicable mission's, program's, or project's Responsible Official (decision maker) at NASA who may reside in a Mission Directorate for HQ-led missions/programs or at the Center level for Center-led missions/programs.

Most NASA actions occur at the Center level and the program or project manager (owner of the action requiring NEPA review) coordinates with the

respective Center NEPA Manager in completing an environmental checklist for all levels of the NEPA review, reviewing the list of extraordinary circumstances for CatExs, preparing additional NEPA documentation as required, and coordinating with the Responsible Official on planning and decision making. For those actions in which principal responsibility has not been assigned to a Center or Centers (e.g., Agency-wide missions, complex programmatic actions), the NASA NEPA Manager coordinates with the appropriate HQ Mission Directorates and with the Responsible Official for planning and decision making to complete the required NEPA documentation.

For the past 20 years, HQ/EMD has maintained and supplemented the internal NASA Environmental Tracking System (NETS), which contains separate modules for NASA's environmental resource areas (e.g., cultural resources). The HQ and Center NEPA Managers use the NETS NEPA Module as a repository for Center NEPA reviews, EAs, and EISs. The module also auto-populates NASA's NEPA Library public website with EAs and EISs. NETS also includes an annual CatEx reporting feature that allows HQ and Center NEPA Managers to track the application of CatExs on an annual basis. The NETS NEPA Module was upgraded in 2018 to include a multi-Center action component which allows for efficient and consolidated reviews of NASA actions that involve more than one Center. Over the years, the NETS NEPA Module has provided supporting data used in revising NASA's NEPA regulations. Since the last revision of this regulation in 2012, NASA has prepared 35 EAs, four EISs, and, in 2018, applied over 2,400 CatExs.

Projects for which NASA expects to use these NEPA procedures during the upcoming years include airborne science campaigns, construction of facilities projects, International Space Station resupply launches, sample return and other space flight missions, and research field campaigns.

### Revised Categorical Exclusions

Section 1216.304 of 14 CFR includes NASA's general provisions for compliance with NEPA through the use of CatExs and identifies actions categorically excluded from EA and EIS review. Within § 1216.304(d), NASA groups similar CatExs under five category headings: Administrative, Operations and Management, Research and Development (R&D), Real and Personal Property, and Aircraft and Airfield Activities. The heading "Research and Development Activities"

is revised to “Research, Development, and Science Activities.” As part of this rulemaking, NASA proposes to amend 16 existing and add nine new categories of actions eligible for categorical exclusion. Many of the changes that NASA is proposing are administrative in nature to clarify application of a particular CatEx. Consistent with CEQ regulations at 40 CFR 1501.4 and 1508.1(d), § 1216.304 of the proposed rule defines “categorical exclusion” to mean “categories of agency actions that normally do not have a significant effect on the human environment.” The new CatExs reflect NASA’s experience with similar factual circumstances, which it has found to have no significant impacts on the “human environment” (as that term is broadly defined in CEQ regulations at 40 CFR 1508.1(m)).

The rationale supporting the amended and new CatExs is set forth in NASA’s Administrative Record for Updates to the National Aeronautics and Space Administration Categorical Exclusions (administrative record). The administrative record is summarized below and may be accessed in full via the online docket and at <https://www.nasa.gov/emd/nepa>. The CEQ regulations encourage Federal agencies to reduce paperwork and delay when complying with NEPA by using CatExs to define categories of actions that normally do not have a significant effect on the human environment and therefore do not require preparation of an EIS (40 CFR 1500.4(a) and 1500.5(a)). NASA believes that amending current and identifying new CatExs meets this intent. Where CatExs are added, amended, or consolidated, the supporting rationale is explained.

§ 1216.304(a): The proposed edits would incorporate a previously defined acronym, improve grammar, and streamline text. A Record of Environmental Consideration (REC) is required in some cases and text has been added to further clarify that a REC is required to document the application of some NASA CatExs to a proposed action. A REC is a brief document used to describe a proposed action, identify the applicable categorical exclusion, determine whether an extraordinary circumstance exists that may require preparation of an EA or EIS, or explain why further environmental analysis is not required.

§ 1216.304(b): The proposed revisions improve grammar and streamline text.

§ 1216.304(c): This section identifies six extraordinary circumstances that the Agency must consider in determining whether application of the CatEx is appropriate. In considering these extraordinary circumstances, if NASA

determines that a significant effect is likely or the effect is unknown, then NASA will prepare an EIS or EA, as appropriate. The update of this section reflects the deletion of one extraordinary circumstance from the original seven and proposed edits to five of the remaining six circumstances to improve grammar and streamline text.

§ 1216.304(d): The proposed edits improve grammar and streamline text. Within the subheadings of this section are the CatEx categories, grouped primarily under activity headings (*i.e.*, (1) Administrative Activities, (2) Operations and Management Activities, (3) Research, Development, and Science Activities, (4) Real and Personal Property Activities, and (5) Aircraft and Airfield Activities). In addition, the proposed edits to § 1216.304(d) include reorganizing and renumbering the paragraph to accommodate new and revised CatExs.

§ 1216.304(d)(1)(ii): The proposed edit incorporates consistent grammar in the section.

§ 1216.304(d)(1)(iv): The proposed edit incorporates consistent grammar in the section.

§ 1216.304(d)(1)(v): The proposed change separates this CatEx into two CatExs with the second becoming a new CatEx in § 1216.304(d)(1)(ix). NASA is making this change to establish a clear distinction between administrative and field activities. The edit retains the text that applies to “information-gathering exercises” and updates the sentence to be grammatically correct.

§ 1216.304(d)(1)(vi): The proposed edits incorporate consistent grammar in the section.

§ 1216.304(d)(1)(ix): This proposed new CatEx was previously part of § 1216.304(d)(1)(v). The description was also updated to include monitoring wells as well as temporary equipment into the description of field study examples. The updated text was added to further clarify covered water sampling activities.

§ 1216.304(d)(2)(i): NASA proposed to add examples of routine operations at the end of the CatEx description to further clarify the types of activities addressed with this CatEx.

§ 1216.304(d)(2)(ii): The proposed edits incorporate consistent grammar in the section.

§ 1216.304(d)(2)(iii): The proposed edits incorporate consistent grammar in the section.

§ 1216.304(d)(2)(v): The proposed change clarifies that routine disposal of materials and wastes in accordance with applicable requirements is included in this CatEx. It would also add examples at the end of the CatEx description to

further clarify the types of activities addressed with this CatEx.

§ 1216.304(d)(2)(vi): This proposed new CatEx would cover habitat and species management conducted within the boundaries of NASA-controlled properties in accordance with applicable Federal, state, or local requirements. NASA is making this change after reviewing other Federal agency CatExs for similar actions. For example, the U.S. Department of Agriculture, Forest Service’s CatExs include similar examples to the proposed new CatEx in 36 CFR 220.6(e)(6)(iv), “Prescribed burning to reduce natural fuel build-up and improve plant vigor,” and 36 CFR 220.6(e)(6)(ii), “Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand.” Currently, NASA’s habitat and species management is conducted under § 1216.304(d)(2)(i). Establishing a distinct CatEx for these types of activities will permit NASA to specifically track habitat and species management. Based on a review of other agencies’ CatExs, NASA has determined that they conduct similar activities, under similar circumstances, and therefore, this proposed new CatEx has been developed to cover these similar habitat and species management activities. The proposed new CatEx would require documentation with a REC.

§ 1216.304(d)(2)(vii): This proposed new CatEx would cover short-term cleanup actions conducted in compliance with the Resource Conservation and Recovery Act or other similar authorities. NASA is making this change after reviewing other Federal agency CatExs for similar actions. NASA is proposing this CatEx based on the Department of Energy’s (DOE’s) CatEx B6.1 (10 CFR part 1021, appendix B). Examples of actions typically covered under DOE’s CatEx that would also be covered by NASA’s new proposed CatEx include the following: repair or replacement of leaking containers; perimeter protection if needed to reduce the spread of, or direct contact with, the contamination; segregation of wastes that may react with one another; and installation of fences, warning signs, or other security precautions if humans or animals have access to the release.

§ 1216.304(d)(2)(viii): This proposed new CatEx would cover replacement of existing energy sources with alternative energy sources. NASA is making this change after reviewing other Federal agency CatExs for similar actions. NASA is proposing this CatEx based on the Defense Logistics Agency’s (DLA’s)

CatEx 37 (DLA Regulation 1000.22, Appendix A). Currently, replacing existing energy sources with alternative energy sources is conducted under § 1216.304(d)(2)(i). Establishing a distinct CatEx for these types of activities will permit NASA to track proactive measures taken as part of sustainability initiatives.

§ 1216.304(d)(2)(ix): This proposed new CatEx would cover routine maintenance, repair, and operation of transportation systems. Currently, these types of activities are conducted under § 1216.304(d)(2)(i). Establishing this distinct CatEx provides clarification between the types of activities covered under each CatEx and creates a more concise description.

§ 1216.304(d)(3): The proposed edit would incorporate the term “science” into the heading to clarify applicability.

§ 1216.304(d)(3)(i): NASA proposes to add a sentence with a list of examples at the end of the CatEx to further clarify the types of research, development, testing, and evaluation activities that this CatEx covers.

§ 1216.304(d)(3)(ii): The proposed change would streamline the description of small quantities of radioactive materials use included in this CatEx. NASA proposes to add a list of examples at the end of the CatEx description to further clarify where radioactive materials may potentially be used.

§ 1216.304(d)(3)(iii): The proposed edits would add examples of laser uses to further clarify the types of activities this CatEx covers.

§ 1216.304(d)(3)(iv): This proposed new CatEx would cover the use of NASA-sponsored payloads as a distinct action separate from the platform on which it is carried. Over the past decade, NASA has launched hundreds of payloads on different platforms. NASA has found the environmental impacts from these activities are not significant. Based on this extensive experience and past analysis, NASA has determined that this type of activity fits the definition of a CatEx under 40 CFR 1501.4 and 1508.1(d), a category of action that normally does not have a significant effect on the human environment.

§ 1216.304(d)(3)(v): This proposed new CatEx category would shift this category of action from “NASA actions normally requiring an EA” and would cover the return of samples categorized as an Unrestricted Earth Return (UER). Celestial bodies are classified based on their possibility of containing life as either UER or Restricted Earth Return (RER). The subcategory of solar system bodies identified to have no indigenous

life forms (e.g., asteroids, comets, planets, dwarf planets, and planetary moons) are defined as UER by NASA’s Planetary Protection Office, within the Office of Safety and Mission Assurance (<https://sma.nasa.gov/sma-disciplines/planetary-protection>). Over the past decades, NASA has been conducting or contributing to UER missions and has found the environmental impacts from these activities not to be significant. Based on this extensive experience and past analysis, NASA has determined that this type of activity fits the definition of a CatEx. RER sample return missions will still be addressed in § 1216.306(b)(2).

§ 1216.304(d)(4)(ii): The proposed edits would incorporate a previously defined acronym, improves grammar, and streamlines text.

§ 1216.304(d)(4)(iii): The proposed edits would streamline text.

§ 1216.304(d)(4)(iv): The proposed edits would incorporate consistent grammar in the section.

§ 1216.304(d)(4)(vi): This proposed new CatEx would cover temporary changes in facility status of real property assets between active and inactive. Inactive status assumes that the asset will be needed in the future and the status change would not pose a significant environmental impact. The proposed CatEx would cover such a temporary status change. Currently, these types of activities are categorically excluded under § 1216.304(d)(2)(i). Establishing this distinct CatEx would improve tracking for NEPA purposes of real property actions.

§ 1216.304(d)(4)(vii): This proposed new CatEx would cover shifting personnel within existing infrastructure at NASA locations. While all actions under the Real and Personal Property Activities include the potential for personnel reductions, realignments, and relocations, they did not specifically identify this aspect in the descriptions. This proposed CatEx would clarify that shifts or reductions in personnel are covered and avoids unnecessary analysis to support previous, repeated conclusions. Based on past experience, such as the examples set forth in the administrative record, NASA has determined that its activities under this proposed CatEx would not result in significant environmental impacts.

§ 1216.304(d)(5)(i): The proposed change would clarify that unmanned aircraft systems are included as aircraft.

§ 1216.304(d)(5)(ii): The proposed change would clarify that unmanned aircraft systems are included as aircraft.

§ 1216.304(e): The proposed edits would incorporate consistent grammar and clarify the Responsible Official’s

role in determining whether extraordinary circumstances exist that may preclude reliance on a categorical exclusion.

§ 1216.304(f): The proposed edits would delete the previous § 1216.304(f) as unnecessary.

### Revisions to NASA Actions Normally Requiring Preparation of an EA

Under paragraph (b), which lists NASA actions normally requiring an EA, NASA is proposing to remove two actions, add one new action, and amend three actions. Where actions normally requiring EAs are removed, added, or amended, the supporting rationale is explained. As noted above, NASA’s NEPA procedures incorporate and supplement CEQ’s NEPA implementing regulations at 40 CFR parts 1500 through 1508, but do not restate those regulations. NASA relies on the procedural and processing requirements of CEQ’s regulations for EAs. To the extent that additional guidance is needed for case-by-case application of a particular requirement, for example selecting the appropriate method of public involvement, NASA will provide specific instructions in NASA NEPA policy (NPR 8580.1). In considering whether a proposed NASA action does, or does not, have significant effects, NASA will consider the effects of connected actions and whether mitigation measures may be implemented which avoid, minimize, or compensate for significant effects caused by a proposed action. If, after consideration of the applicable criteria, NASA determines that a Finding of No Significant Impact (FONSI) cannot be reached, NASA will prepare an EIS using the EA’s analysis as a starting point for preparation of the EIS.

§ 1216.305: The proposed edit would align the heading name to be consistent with § 1216.306.

§ 1216.305(a): The proposed edits would incorporate consistent grammar in the section and replace “The Responsible Official” with “NASA” to be consistent with terminology in § 1216.306.

§ 1216.305(b): The proposed edit would remove “typical” from the heading as the term is redundant with “normally,” which is the term used in the CEQ regulations and CEQ’s 2010 CE guidance.

§ 1216.305(b)(1) (removed): NASA would remove the existing EA category because the launch aspect of the activity is the driver for potential environmental impacts rather than the spacecraft development and space flight projects/programs (i.e., payload systems). Launch environmental impacts are

considered in an EIS under § 1216.306(b)(1) and other Agency launch vehicle NEPA documents. For example, in the *2013 Supplemental Environmental Assessment to the November 2007 Environmental Assessment for the Operation and Launch of the Falcon 1 and Falcon 9 Space Vehicles at Cape Canaveral Air Force Station Florida*, the United States Air Force analyzed potential environmental impacts associated with the operation and launch of a newer version of the Falcon 9 (version 1.1). In addition, a new CatEx, § 1216.304(d)(3)(iv), is proposed to address payload systems.

The proposal would renumber the existing example under paragraph (b)(2) to paragraph (b)(1), incorporate consistent grammar, and streamline the description.

§ 1216.305(b)(2): The proposed edit would expand the description of activities to include some activities previously identified as “normally requiring an EIS.” The change would shift the level of environmental analysis associated with major changes of a master plan from an EIS to an EA. This edit clarifies that major changes of a master plan normally do not result in significant environmental impacts. For example, the *2017 Supplemental Environmental Assessment for the NASA Langley Research Center Master Plan, 2016 Programmatic Environmental Assessment for Adoption of JSC’s Master Plan, and 2011 Programmatic Environmental Assessment for the NASA Jet Propulsion Laboratory Facility Master Plan Updates* analyzed the potential environmental impacts related to master plan updates and resulted in FONSI. NASA would tier from a programmatic EA to document the implementation of elements of Center Master Plans that are not adequately addressed in the EA.

Center Master Plans outline NASA’s infrastructure plans to support Center operations projected over a 20-year period. An example of a major change would be a proposal for a new facility that was not envisioned in the Center Master Plan. It could also include a new facility that is included in the Center Master Plan that NASA wishes to consider as a new construction site within the Center that could impact natural resources. NASA may determine that the new site would not propose a change in environmental effect, such as construction on a site where a building has recently been demolished. Should NASA determine through EA analysis that a FONSI cannot be reached, NASA will prepare an EIS. This amended EA category also reflects a change in

numbering from paragraph (b)(3) to paragraph (b)(2).

§ 1216.305(b)(3): The proposed edit would clarify text associated with the level of analysis to reflect the expectation of no major changes to established land use. This revised EA category also reflects a change in numbering from paragraph (b)(4) to paragraph (b)(3).

§ 1216.305(b)(4): This proposed new EA category would move from “NASA actions normally requiring an EIS” to “NASA actions normally requiring an EA” for launching a nuclear space system. NASA has prepared one EA (*i.e.*, *1994 Final Environmental Assessment for the Mars Pathfinder Mission*) and eight EISs over the last three decades for nuclear space system (radioisotope power systems (RPS))-enabled missions listed below:

*2014 Final Environmental Impact Statement for the Mars 2020 Mission and 2020 Supplemental Environmental Impact Statement,*

*2006 Final Environmental Impact Statement for the Mars Science Laboratory Mission,*

*2005 Final Environmental Impact Statement for the New Horizons Mission,*

*2002 Final Environmental Impact Statement for the Mars Exploration Rover,*

*1995 Cassini Final Environmental Impact Statement,*

*1990 Final Environmental Impact Statement for the Ulysses Mission (Tier 2),*

*1989 Final Environmental Impact Statement for the Galileo Mission (Tier 2), and*

*1988 Final (Tier 1) Environmental Impact Statement for the Galileo and Ulysses Missions.*

The DOE served as a cooperating agency in the preparation of each EIS because of its technical expertise and jurisdiction by law over the special nuclear material used in the spacecraft. In addition to extensive study of the safety features of the RPS, the DOE conducted radiological consequence analyses for each mission. This analysis has consistently demonstrated the low probabilities of a launch or post-launch mishap that would result in damage to the nuclear material’s containment systems that would result in a release into the human environment with associated environmental impacts. None of the safety consequences and environmental analyses prepared over the 30-year span of these EISs conclude a significant environmental effect would be likely.

To date, all NASA nuclear-enabled missions have launched from Kennedy

Space Center (KSC) in Cape Canaveral, FL. Prior to the launch of the Mars 2020 mission in August 2020, the NASA–KSC completed consultation with the United States Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act. The USFWS concurred with NASA’s determination that the proposed action (Mars 2020 launch) may affect, but is not likely to adversely affect, threatened or endangered species or result in the destruction of designated critical habitat. In its consultation, NASA and USFWS agreed that in the event of a launch mishap, NASA would enter into emergency consultation to assess and remediate potential effects, if any, on listed species located in the affected area. NASA’s long history in evaluating the safety, reliability, and potential environmental impacts of the use of nuclear-enabled spacecraft leads the Agency to conclude that the environmental effects of the use of nuclear-enabled spacecraft, even in the highly unlikely event of a launch or post-launch mishap, would not be significant. This conclusion leads the Agency to propose that for future nuclear-enabled missions, the appropriate starting level of its NEPA analysis is an EA, which, as is required by NEPA, would allow for the preparation of an EIS if the environmental effects were assessed to be significant. This change in the starting level of the NEPA analysis does not change NASA’s long-standing commitment to conduct a rigorous, risk-informed safety analysis and launch authorization process as detailed in the new Presidential Memorandum signed August 20, 2019, *Launch of Spacecraft Containing Space Nuclear Systems*. Additional information on NASA’s RPS-enabled missions is available at <https://www.nasa.gov/emd/nepa/rps>.

§ 1216.305(b)(5) (*removed*): As previously discussed, NASA is proposing to establish a CatEx at § 1216.304(d)(3)(v) for UER missions. As noted in the description that supports the proposed new CatEx, NASA has been conducting or contributing to UER missions over the past decades and has found the environmental impacts from these activities normally are not significant.

#### **Revisions to NASA Actions Normally Requiring Preparation of an EIS**

Under the heading “NASA actions normally requiring an environmental impact statement (EIS),” NASA is proposing to amend the headings to reflect categories under § 1216.306(b) that were identified as § 1216.306(c), (d), (e), and (f) (*i.e.*, the activities should

have been under the heading “NASA actions normally requiring an EIS). In addition, NASA is proposing to remove two (existing § 1216.306(c) and (e)) and amend three EIS categories. The two removed categories have been modified and incorporated into NASA actions normally requiring an EA as discussed in the previous section. As noted above, NASA’s NEPA procedures incorporate and supplement CEQ’s NEPA implementing regulations at 40 CFR parts 1500 through 1508, but do not restate those regulations. NASA relies on the procedural and processing requirements of CEQ’s regulations for NASA EISs. To the extent that additional guidance is needed for case-by-case application of a particular requirement, such as selecting the appropriate method of public involvement as required by 40 CFR 1506.6, NASA will provide specific instructions in the NASA NEPA Policy (NPR 8580.1).

§ 1216.306: The heading title would include the acronym definition.

§ 1216.306(a): The proposed edits would improve grammar and streamline text while also incorporating a cross reference to CEQ’s regulation.

§ 1216.306(b): The proposed edit would remove “typical” from the heading as the term is redundant with “normally,” which is the term used in the CEQ regulations.

§ 1216.306(b)(1): The edit adds “NASA-developed” to clarify that an EIS will be prepared when NASA proposes to develop a new space launch system, such as the EIS prepared ([https://www.nasa.gov/directorates/heo/library/nepa/orion\\_sls.html](https://www.nasa.gov/directorates/heo/library/nepa/orion_sls.html)) for the new launch vehicle that NASA is currently developing (<https://www.nasa.gov/exploration/systems/sls/indx.html>).

§ 1216.306(b)(2): This proposed revised category of NASA actions normally requiring preparation of an EIS would replace the parenthetical reference to appendix A with the definition from appendix A, remove reference to a subcommittee that is no longer active, and restructure the description to clarify the aspect of NASA activities that would potentially result in environmental impacts necessitating an EIS level of analysis. For example, it is the management of restricted Earth return samples from solar system bodies and not the development of the space flight program for those returned samples that potentially result in environmental impacts. This revision also expands the description to include ground systems that will be needed to process and manage an RER sample such as recovery, transport, and curation. This

revised category of actions normally requiring preparation of an EIS also reflects a change in numbering from paragraph (d) to paragraph (b)(2).

§ 1216.306(b)(3): This proposed revised category of NASA actions normally requiring preparation of an EIS would add “and natural” to clarify that effects are potentially on the human and natural environment and remove text that is repetitive as it is not necessary to indicate that if an existing EIS covered the scope of the master plan, another EIS would not be required. This revised category of actions normally requiring preparation of an EIS also reflects a change in numbering from paragraph (f) to paragraph (b)(3).

#### Other Amendments

Additional amendments are proposed in sections of the rule, other than §§ 1216.304, 1216.305, and 1216.306. These proposed edits are described below.

§ 1216.300(b): The proposed edits would streamline text.

§ 1216.302(a): The proposed edit adds the name and responsibilities of the SAO.

§ 1216.302(a)(1): The proposed edits would shift the definition of SEO from § 1216.302(a), incorporate consistent grammar, and streamline the description.

§ 1216.302(a)(2): The proposed edits would shift numbering due to the insert of § 1216.302(a)(1) and streamline the description.

§ 1216.302(a)(3): The proposed edits would shift numbering due to the insert of § 1216.302(a)(1) and streamline the description.

§ 1216.302(b): The proposed edits would simplify and clarify identification of decision makers as the NASA official with authority to commit the Agency to take the proposed action.

§ 1216.302(c): The proposed edits would remove unnecessary text.

§ 1216.303(a): The proposed edits would update text.

§ 1216.303(a)(1): The proposed edits would incorporate consistent grammar.

§ 1216.303(a)(2): The proposed edits would update NASA’s policy on NEPA and public involvement.

§ 1216.303(a)(3): The proposed edits would clarify text and incorporate consistent grammar.

§ 1216.303(b): The proposed edits streamline text.

§ 1216.303(c): The proposed edits would incorporate consistent grammar and add “public health and safety” and “security” as factors to be considered for a NASA proposed action. In addition, a cross reference to CEQ’s regulation would be incorporated.

§ 1216.303(d): This proposed new description under the NEPA process in NASA planning and decision making identifies when NASA uses a REC. For example, RECs are used to document: application of a specific Categorical Exclusion (CatEx); adoption of a draft or final EIS, EA, or portion thereof; reevaluation of an existing NEPA document; and determination on whether an action fits within an existing NEPA document, including a programmatic NEPA document. Adoption of the proposed new description would avoid unnecessary analysis to support previous, repeated conclusions.

§ 1216.307: The proposed edits would add two paragraphs, § 1216.307(a) and (b), to clarify the conditions for tiering within NASA’s process and incorporate consistent grammar. This change is intended to improve NASA efficiency and maximize the use of programmatic documents to streamline NASA’s NEPA process.

§ 1216.308: The proposed edits would clarify NASA’s process for preparing supplemental NEPA documents. The proposed edits would also incorporate text to be consistent with CEQ regulations. The proposed edits also include incorporation of paragraphs (§ 1216.308(a) through (d)) and add text that identifies NASA’s process for completion of Supplement Analysis. A Supplement Analysis is a NASA document used to determine whether a new or supplemental EA or EIS should be prepared or to support a decision to prepare a new EA or EIS.

§ 1216.309: The proposed edit would incorporate consistent grammar.

§ 1216.310(a): The proposed edit would incorporate consistent grammar.

§ 1216.311(a): The proposed revisions would incorporate edits for consistency with the CEQ guidance memorandum “Emergencies and the National Environmental Policy Act Guidance” (85 FR 60137 (Sept. 14, 2020)), and incorporate consistent grammar. The proposed revision also would remove “in accordance with the provisions in sections 305 and 307 of this subpart,” as it duplicates text that refers to completion of NEPA analysis.

§ 1216.311(a)(1): The proposed revisions incorporate edits for consistency with CEQ’s updated emergencies guidance, incorporate consistent grammar, and streamline text.

§ 1216.311(a)(2): The proposed revision shifts § 1216.311(b) to the previously reserved § 1216.311(a)(2). The proposed revisions would incorporate edits for consistency with CEQ’s updated emergencies guidance, incorporate consistent grammar,

streamline text, and incorporate elevation of oversight of compliance with NEPA in an emergency to the SAO rather than the SEO.

§ 1216.311(b): The proposed revision would reflect a shift in subparagraph numbering and incorporate edits for consistency with CEQ's updated emergencies guidance, incorporate consistent grammar, streamline text, and incorporate elevation of oversight of compliance with NEPA in an emergency to the SAO rather than the SEO.

Appendix A to Subpart 1216.3: The proposed edit removes definitions and incorporates new acronyms.

## Regulatory Analysis

### A. Executive Order (E.O.) 12866—Regulatory Planning and Review

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

### 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 proposed 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 proposed rule modifies existing policies and procedural requirements for NASA compliance with NEPA. The proposed 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 proposed rule would not have a “significant economic impact on a substantial number of small entities.”

### C. Review Under the Paperwork Reduction Act

This proposed 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 proposed rule would revise 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 (7th Cir. 2000).

### E. Review Under Executive Order 13132

NASA has considered this proposed rule under the requirements of E.O. 13132, Federalism. The Agency has concluded that the rule conforms with the federalism principles set out in this E.O. 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 proposed rule on state, local, and Tribal governments, and the private sector. This proposed 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 proposed rule is not subject to the requirements of section 202 and 205 of the UMRA.

### G. Expected Impact of the Proposed Rule

NASA does not expect this proposed 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 EA/Finding of No Significant Impact, and 0.16 percent had an EIS/Record of Decision). By expanding the list of actions covered by a CatEx, NASA would promote 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 proposed 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 proposed rule does not materially alter the budgetary impact of entitlements, grants, NASA loan programs, or the rights and obligations of recipients thereof. The proposed 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 proposed 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 proposes to amend 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.*; 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:** 42 U.S.C. 2451 *et seq.*; 42 U.S.C. 4321 *et seq.*; 42 U.S.C. 4371 *et seq.*; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; E.O. 12114, 44 FR 1957, 3 CFR, 1979 Comp., p. 356; and 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 (OSI). 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 a 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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**DEPARTMENT OF COMMERCE**

**Census Bureau**

**15 CFR Part 30**

[DOCKET NO. 230421–0109]

RIN 0607–AA61

**Foreign Trade Regulations (FTR): State Department Directorate of Defense Trade Controls Filing Requirement and Clarifications to Current Requirements**

**AGENCY:** Census Bureau, Commerce Department.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Census Bureau is proposing to amend its regulations to reflect new export reporting requirements related to the State Department, Directorate of Defense Trade Controls (DDTC) Category XXI Determination Number. Specifically, the Census Bureau is proposing to add a conditional data element, DDTC Category XXI Determination Number, when “21” is selected in the DDTC USML Category Code field in the Automated Export System (AES) to represent United States Munitions List (USML) Category XXI. In addition to the new export reporting requirement, the proposed rule would make remedial changes to the Foreign Trade Regulations (FTR) to update International Traffic in Arms Regulations (ITAR) references in existing data elements: DDTC Significant Military Equipment Indicator and DDTC Eligible Party Certification Indicator. The proposed rule also makes remedial changes to the FTR that were proposed in the Notice of Proposed Rulemaking published December 15, 2021.

**DATES:** Written comments must be received on or before July 3, 2023.

**ADDRESSES:** You may submit comments by any of the following methods: