



NASA Procedural Requirements

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Subject: Implementing The National Environmental Policy Act And Executive Order 12114

Responsible Office: Environmental Management Division

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CHAPTER 7. Special Topics of Concern

7.1 Introduction

a. A number of special topics have been reserved for this chapter either because they are not encountered often or because their importance deserves highlighting and special treatment. Among the topics not frequently encountered are emergency circumstances requiring action, classified actions and information, and legislative EIS's.

b. Topics that are special because of their importance and value in NEPA compliance are supplemental EIS's, programmatic NEPA documents (EA's and EIS's), tiering an EIS, circumstances under which interim actions are allowed while an EIS is being prepared, incomplete and unavailable information and its role in NEPA documents, modifications to FONSI's and records of decision (ROD's); disagreements between agencies on EIS analyses and conclusions; U.S. Environmental Protection Agency (EPA) rating of EIS's and their importance to NEPA document defensibility; cumulative impacts; facility closures; conflict of interest in NEPA document preparation; cooperative arrangements; electronic media; environmental remediation projects; and metrics. Each of these topics is addressed in the following sections.

7.2 Emergency Circumstances

7.2.1 Occasionally, a Federal agency may be faced with an emergency circumstance making it necessary to implement an action that would have a significant impact on the human environment without observing the required processes. Emergency circumstances are not frequently encountered, but when they occur they are not exempt from NEPA; rather, they are subject to special rules. In these instances, 40 CFR §1506.11 provides that the action agency ". . . should consult . . ." with the Council on Environmental Quality (CEQ) with respect to making alternative arrangements. Such arrangements will be limited to ". . . actions necessary to control the immediate impacts of the emergency."

7.2.2 Should an emergency require NASA to institute rapid actions that would result in substantial environmental impact without the benefit of previous NEPA analyses, Headquarters/ Environmental Management Division (HQ/EMD) shall be notified immediately by the Sponsoring Entity responsible for the action (14 CFR §1216.318). HQ/EMD, in turn, will consult with the Associate Administrator for Management Systems (AAMS), Office of the General Counsel, Sponsoring Entity, local Environmental Management Office (EMO), and other NASA entities as required, before consulting with CEQ.

7.2.3 HQ/EMD, in coordination with AAMS and the Office of the General Counsel, will consult with CEQ regarding alternative arrangements for NEPA compliance. Only actions necessary to control the impacts of the emergency will be exempt from immediate NEPA requirements. All other actions are subject to NEPA review. Actions the Agency simply wants to accomplish quickly do not constitute an emergency circumstance; emergencies are usually viewed

as catastrophic events beyond the Agency's control.

7.2.4 CEQ may require a NEPA analysis of the action after the fact, when the emergency circumstance is over. The agreements made with CEQ by HQ/EMD and the AAMS, in coordination with the Office of the General Counsel, are binding upon NASA and the Sponsoring Entity.

7.3 Classified, Privileged, or Other Protected Information

7.3.1 A proposed action or parts of a proposed action may be subject to a security classification established by an Executive Order or statute and must be kept secret because of national security or foreign policy considerations. CEQ regulations (40 CFR §1507.3(c)) and NASA regulations (14 CFR §1216.317) provide for instances such as these. Classified actions or portions of classified actions are not exempt from NEPA; rather, they are only treated differently. The portions of an EA or EIS containing classified materials and associated analyses can be safeguarded and restricted from public review by organizing them into a classified annex or appendix, with the unclassified portions made available to the public.

7.3.2 In addition, privileged or other protected information (not classified) can consist of written and electronic materials and communications from individuals, corporations, or other parties. Privileged or protected information is most often considered nondisclosable, and such non-disclosure may be indicated by certain markings (e.g., BUSINESS CONFIDENTIAL, COMPANY PROPRIETARY, FOR OFFICIAL USE ONLY). Such types of information provided to NASA can range from engineering drawings, to specification computer code, and business proposals. Until NASA determines whether or not the information merits privileged or protected status, it should be presumed that such markings are valid and protection should be provided. Once NASA determines that the information merits protected status, NASA should take all prudent measures to ensure that such nondisclosable information is not released in NEPA-related documents or otherwise unless legally required to do so.

7.3.3 There are also other types of protected information often encountered during the NEPA process. This information may include the mailing addresses, electronic mail addresses, and telephone numbers of individuals who are consulted or participate during the NEPA process. NASA should take prudent measures to ensure that such private information is not disclosed in its NEPA-related documents or otherwise unless legally required to do so.

7.3.4 Consult with HQ/EMD whenever classified, privileged, or protected information (other than the types specifically mentioned above) or materials are involved.

7.4 Legislative EIS's

7.4.1 CEQ regulations (40 CFR §1502.3 and §1508.17) require that proposals for legislation that would significantly affect the quality of the human environment be accompanied by a legislative EIS. If a Federal agency develops or provides significant support for a legislative proposal, it is responsible for preparing the EIS. Annual authorization and appropriation legislation do not require an EIS (40 CFR §1508.17). NASA does not often become involved in preparing proposals for legislation that would significantly affect the quality of the human environment. When such a case does arise, the NASA Office of Legislative Affairs is responsible for ensuring that an appropriate EIS accompanies a legislative proposal. The Office of Legislative Affairs will consult with HQ/EMD in planning and preparing a legislative EIS. HQ/EMD will consult with the Office of the General Counsel and other NASA organizations, as appropriate, in implementing this responsibility.

7.4.2 The rules governing preparing a legislative EIS are addressed in CEQ regulations (40 CFR §1506.8) and in NASA regulations (14 CFR §1216.315). A brief summary of these rules follows:

- a. The legislative EIS should accompany the legislative proposal, but can be submitted up to 30 days later, and
- b. The steps for a legislative EIS are the same as described in chapter 6 except--

(1) Scoping is not required.

(2) The Draft legislative EIS will be considered the completed statement under NEPA, unless a Congressional Committee with jurisdiction over the proposal requires a Draft and Final EIS; the proposal results from a study process required by statute (e.g., the Wild and Scenic Rivers Act) requiring a Draft and Final EIS; legislative approval is being sought for a Federal or federally assisted construction or other project at a specific geographic location(s), in which case a Draft and Final EIS is required; or the Agency decides to prepare a Draft and Final EIS.

(3) If a Draft and Final EIS are required, the Draft EIS will be circulated for public review just as any other EIS, with the comments and Agency responses forwarded to the congressional committee(s) with jurisdiction.

7.5 Supplemental EIS's

7.5.1 Occasionally, during or after preparation of an EIS, a supplemental Draft and Final EIS may be required if (a) the "agency makes a substantial change in the proposed action that is relevant to environmental concerns, or (b)

there is significant new circumstances or information relevant to environmental concerns that bears on the proposed action or its impacts" (see 40 CFR §1502.9(c)). Examples of the types of NASA actions requiring a supplemental EIS (see chapter 6) include--

- a. A major change in the type of propulsion system or fuel during the development or operation of a new launch vehicle that results in a substantial change in air quality impacts,
- b. New modeling analyses or studies that indicate a substantial change in the predicted environmental impacts of a substance emitted to the upper atmosphere, or
- c. Monitoring during implementation of the action determines that mitigation of a potentially significant impact is not sufficient, and substantial impacts are occurring (14 CFR §1216.313(c)).

7.5.2 These and other similar types of new information or circumstances can cause either the Draft or Final EIS to no longer provide an accurate picture of the impacts of the proposed action, no longer represent the range of reasonable alternatives, or cause one of the alternatives not selected to become substantially more desirable. In essence, the Draft or Final EIS becomes outdated in some essential regard. In these instances, the agency may need to supplement the Draft EIS (if the Final EIS has not yet been released) or supplement the Final EIS (40 CFR §1502.9).

7.5.3 NASA may also choose to prepare a supplement at its own discretion if it feels that the purposes of NEPA will be furthered by doing so. When a supplemental EIS may be indicated, the Sponsoring Entity must inform and consult HQ/EMD.

7.5.4 Supplemental EIS's are prepared in the same manner as described in chapter 6, starting with a Notice of Intent (NOI) and ending with a ROD. However, there are two major differences: a public scoping period is not required in the supplement process, and the focus of the supplemental analyses is on the change in the proposed action, or the new information or circumstances (the balance of the EIS analyses that are unaffected can simply be summarized and incorporated into the supplemental EIS by reference).

7.5.5 All supplements must be issued both as Draft and Final Supplemental EIS's, similar to normal EIS's.

7.6 Programmatic NEPA Documents

7.6.1 CEQ regulations at 40 CFR §1502.4(b) refer to EIS's for broad actions. The term broad action describes actions that can include agency programs and broad sets of related or similar actions. In common use, EIS's addressing such broad actions are called programmatic EIS's. Broad actions can also be addressed by EA's. Programmatic NEPA documents are encouraged in appropriate circumstances.

7.6.2 Broad actions can often be grouped by geographic location; relevant similarities (e.g., common timing, impacts, alternatives, methods of implementation, subject matter, or affected media); and state of technological development (e.g., Federal and federally funded research and development and demonstration programs for new technologies).

7.6.3 Agencies have broad discretion in determining whether to prepare programmatic NEPA documentation. Consult with the local EMO and HQ/EMD if contemplating a programmatic NEPA document.

7.6.4 In deciding to prepare programmatic documentation, consider the following two criteria:

- a. The programmatic EIS is sufficiently forward looking to contribute to the decisionmakers basic planning of the program or connected/similar actions.
- b. The decisionmaker, by not preparing a programmatic EIS, would in effect segment the program and the scope of the environmental evaluation. In other words, by addressing each component or action individually, the decisionmaker runs the risk of missing significant environmental impacts from implementing the program or connected/similar actions.

7.6.5 Programmatic NEPA documents, by taking a broad view, in effect avoid segmenting environmental analyses of common concerns by analyzing them in the entire program or suite of related or similar actions (e.g., the combined impacts of rocket motor exhaust on air quality would be evaluated across the entire array of related missions). Programmatic NEPA documents can also be an effective tool for addressing cumulative environmental impacts. Such programmatic NEPA documents thus have a global or big picture focus on environmental concerns that cut across programs and/or are shared by related or similar actions or plans. The processes for preparing programmatic EA's and EIS's are the same as those discussed in chapters 5 and 6.

7.6.6 Programmatic documents are broad in scope, or big picture (i.e., address an entire program or a broad action). They may be followed by site- or mission-specific documents. The follow-on NEPA documents do not have to provide detailed analyses of the shared environmental concerns addressed in the programmatic documents. Those concerns and relevant analyses are treated by the programmatic document and are grandfathered to the extent that the analyses remain accurate. The site- or mission-specific documents, for those environmental concerns, reference the programmatic document and only summarize the programmatic analyses. The time, effort and resources for the

documents can, thus, focus principally on the individual program subelement or specific action of concern.

7.6.7 Before deciding to prepare a programmatic EA or EIS, the Sponsoring Entity must consult with HQ/EMD.

7.7 Tiering

7.7.1 Tiering is a valuable technique when preparing NEPA documentation for large broad programs and related actions. Tiering is allowed only from an EIS. Tiering of EIS's is a process of ordering interrelated statements for the various stages of developing and implementing a program or project. Encouraged by CEQ regulations (40 CFR §1502.20, §1508.28) and NASA regulations (14 CFR §1216.314), tiering eliminates repetitive discussions of issues and focuses on the real issues at each level of a program or project. Tiering is appropriate for broad program actions and related individual component actions of the broad program; proposed actions having broad effects (e.g., global, national, or regional) with component actions having more localized effects; and a class of interrelated actions having similar or common impacts, with each specific action having project-specific impacts. Tiering is appropriate when it helps the agency focus on issues that are ripe for a decision.

7.7.2 A set of tiered NEPA documents looks like a funnel, with the EIS at the top addressing a broad action or set of interrelated actions having a set of broad or common impacts and decisions. In descending the funnel, the NEPA documents for the components of the program or the individual actions within the interrelated set have a narrower, project- or component-specific focus.

a. Consider a space program consisting of a suite of missions for the common purpose of exploring a planet. It might be appropriate to prepare and issue a broad EIS that would cover the common issues across the entire program (e.g., criteria for launch vehicle selection, common onboard electric power systems, common spacecraft navigation and propulsion systems and common heating sources).

b. The impacts of these common issues are addressed in a broad EIS. Tiered from the broad EIS could be a series of more narrowly focused individual mission-specific EA's or EIS's, addressing specific mission parameters, such as trajectories, launch vehicles, and power sources. The more narrowly focused EIS's and EA's would not repeat the impact analyses of common issues from the broad EIS; rather, they would summarize those analyses and incorporate them by reference while focusing on the unique mission-specific issues and impacts.

7.7.3 Tiering is based upon an initial EIS addressing broad decisions or actions. The tiered NEPA documents (EA's and EIS's) address components of the broad action.

7.8 Interim Actions

7.8.1 While an EIS is being prepared, an agency is prohibited by CEQ regulations (see 40 CFR §1506.1(a)) from taking any action associated solely with the proposal that would have an adverse environmental impact or limit the choice of reasonable alternatives before completing the NEPA process.

7.8.2 If a programmatic or broad scope EIS is being prepared and the action is not covered by an existing programmatic EIS, the agency may not undertake any action within the program that would significantly affect the quality of the human environment before completing the ROD unless the action is justified independently of the program, accompanied by an adequate EIS or other NEPA document, and would not prejudice the ultimate decision on the program (a decision can be prejudiced when an interim action would limit or narrow the alternatives).

7.8.3 While preparing a programmatic or broad scope NASA EA or EIS, if the Sponsoring Entity wants to implement a component of the program or broad action, the above rules must be met and documented in a memorandum or Record of Environmental Consideration (REC) transmitted to the HQ/EMD for concurrence. The HQ/EMD will consult with the Office of the General Counsel and other NASA organizations, as appropriate, in making the determination.

7.8.4 Until the NEPA process is complete, the Sponsoring Entity must not implement any component of the action that will have an impact on the environment or limit the choice of alternatives.

7.8.5 The Sponsoring Entity can develop plans and designs or perform other work necessary to prepare and submit applications for Federal, State, or local permits. In addition, the Sponsoring Entity can apply for permits prudently necessary to maintain the project schedule.

7.8.6 In determining which NASA tenant, applicant, or contractor activities related to a proposed Federal action may be approved or implemented as an interim action, the Sponsoring Entity must determine, among other matters, that--

a. The activity will not have an adverse environmental impact, and

b. The expenditure is minimal. It is ordinarily presumed that, except in unusual circumstances, expenditures up to 10 percent of the proposed project's or activity's cost will not compromise the objectivity of NASA's review and decisionmaking. Whether or not expenditures above that level would compromise the Agency's decisionmaking

should be considered on a case-by-case basis taking all relevant circumstances into account. See section 3.4 for more information.

7.9 Incomplete and Unavailable Information

7.9.1 While preparing an EA or EIS, an agency may find that information needed to evaluate some potentially substantial adverse impacts of an alternative is either unavailable or incomplete, and that analysis is essential to making a reasoned choice among alternatives. When this occurs, CEQ regulations (40 CFR §1502.22) require that it be made clear that such information is lacking and the following steps be taken:

a. If the means (method) for obtaining the information are known and the costs of obtaining the information are not exorbitant, the Agency must obtain the needed information.

b. If the means to obtain the information are not known and/or if the costs are exorbitant, then the Agency shall provide the following in the EA or EIS:

(1) A statement that the information is incomplete or unavailable,

(2) A statement regarding the relevance of the incomplete or unavailable information to making a reasoned choice among alternatives,

(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse effects, and

(4) The agency's evaluation of the impacts using theoretical approaches or research methods generally accepted in the scientific community.

c. Applied in the context of this section, reasonably foreseeable effects include impacts that have catastrophic consequences (even if the probability of occurrence is low). Analyses of the impacts must be supported by credible scientific evidence, must not be based on pure conjecture, and must be within the rule of reason.

7.10 Modifying FONSI's and ROD's

7.10.1 Occasionally, an existing FONSI or ROD may be modified or revised rather than initiating a new EA or EIS process. Before such an action can be taken, it must be clear that the proposed modification or revision has been adequately addressed by the existing EA or EIS. Strict internal controls apply to all proposals to modify or revise an existing FONSI or ROD.

a. The Sponsoring Entity contemplating a modification or revision must prepare its recommendation along with justification for the proposed change. The local EMO must be consulted and concur with the recommendation. For a modification of a FONSI issued pursuant to an exceptional action EA, the recommendation is then forwarded to HQ/EMD.

b. Proposed revisions or modifications must not pose any substantial new direct, indirect, or cumulative impacts that have not already been addressed in the EA or EIS.

c. To modify a FONSI or a ROD issued pursuant to an exceptional action EA, HQ/EMD will review the recommendation, consult with the Office of the General Counsel and other NASA organizations, as appropriate, and advise AAMS. Upon concurrence by AAMS, the Sponsoring Entity prepares the revised FONSI or ROD for publication.

d. If a FONSI is involved, the revised FONSI or notice of its availability must be published or distributed.

e. Upon concurrence by AAMS, the Sponsoring Entity prepares the revised FONSI or ROD for publication.

f. If a ROD is involved, a notice must be published in the Federal Register and local newspapers, as appropriate, outlining the revision and the basis for it. As with the original ROD, the revised ROD is signed by the decisionmaker and made available to interested parties upon request.

7.10.2 Signature authority for a revised FONSI and ROD is the same as described in chapters 5 and 6.

7.11 Disagreements Between Agencies on EIS Analyses

7.11.1 Occasionally, the agency sponsoring an EIS may encounter disagreement with another agency regarding the analyses and/or conclusions presented in the document for a significant adverse impact. Disagreements usually occur during public review and comments on the Draft EIS. Such disagreements can arise with other Federal, State, or local agencies or even with a cooperating agency helping to prepare the EIS. Such disagreements should never be taken lightly, and they should be resolved, if at all possible, with the other agency.

7.11.2 When disagreements between Federal agencies cannot be resolved on the agency level, CEQ may be called

upon to resolve the matter by either or both agencies (40 CFR Part 1504). In providing guidance regarding what environmental objections are appropriate to refer to CEQ, 40 CFR §1504.2 recommends that after concerted, timely, unsuccessful attempts to resolve the differences with the lead agency, an agency should weigh the potential adverse environmental impacts considering "possible violation of national environmental standards or policies; severity; geographical scope; duration; importance (of the adverse impacts) as precedents; and availability of environmentally preferable alternatives."

7.11.3 An agency disagreeing with a sponsoring agency's EIS must first advise the sponsoring agency at the earliest possible time that it intends to refer the matter to CEQ unless a satisfactory agreement is reached. If the agency finally decides a referral is necessary, and that all avenues for compromise and resolution have been exhausted, the following series of events ensues:

- a. The head of the referring agency transmits a letter to the sponsoring agency advising that it is filing a referral to CEQ and why,
- b. The referring agency delivers its referral to CEQ, including all the information specified in 40 CFR §1504.3(c), no later than 25 days after the Final EIS becomes available to the public via EPA's Notice of Availability (NOA),
- c. The sponsoring agency then has 25 days to deliver a response to the referral to CEQ or to inform CEQ that no response will be made (40 CFR §1504.3(d)),
- d. CEQ then has 25 days after receipt of the referral and the sponsoring agency's response in which to do any or all of the following: conclude that the process of referral and response has finally resolved the matter; initiate discussions with the agencies, attempting to mediate the dispute; hold public hearings or meetings to obtain additional views and information; determine the issue is not of national importance, requesting the agencies to resolve it; determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until the head of either or both agencies informs CEQ that the differences are irreconcilable; publish its findings and recommendations; or submit the referral and response along with the Council's recommendation to the President for action, and
- e. CEQ has 60 days to mediate the disagreement, hold public meetings or hearings, determine that the agencies should continue to negotiate until resolved, or conclude that the disagreements are irreconcilable.

7.11.4 Of particular importance is the EPA's Office of Federal Activities review of the EIS. EPA not only publishes the NOA that starts the public review period for the Draft EIS, it reviews and rates the EIS. Ratings are addressed in the next section.

7.12 EPA Rating of EIS's and What it Means

7.12.1 Under Section 309 of the Clean Air Act (CAA) (42 U.S.C. §7609), EPA is charged with reviewing and commenting on ". . . the environmental impact of any matter relating to duties and responsibilities . . . of the (EPA) Administrator, contained in any . . . newly authorized Federal projects. . . and any major Federal agency action . . . to which Section 102(2)(C) of Public Law 91-190 (NEPA requirement for EIS's) applies"

7.12.2 In practice, EPA has applied the requirement primarily through the review of EIS's (required of all major Federal actions including proposed legislation and regulations. Under the CAA §309 mandate, EPA has set up a system for the review of all EIS's filed with its Office of Federal Activities. The review is done at EPA Headquarters or in one of the EPA regional offices. EPA Headquarters generally reviews policy statements, regulations, legislation, and actions that "embody a high degree of national controversy or significance[,], or pioneer Agency policy." Regional offices review all other EIS's, even those that might concern impacts in more than one EPA region. When more than one region is affected, however, a lead region is designated for the review.

7.12.3 EPA has a two-criteria rating system for EIS's (Policy and Procedures for the Review of Federal Actions Impacting the Environment, EPA Office of Federal Activities, October 3, 1984). The first criterion relates to the anticipated environmental impacts associated with implementing the preferred alternative. If no preferred alternative is identified, then the impacts are rated according to all of the alternatives being considered.

7.12.4 According to EPA guidance, impacts are evaluated primarily on the potential for the project to violate Federal environmental laws and regulations. However, the currently used guidance was published in 1984, and other concerns have developed more recently that are also being screened. These concerns include issues such as environmental justice and pollution prevention.

7.12.5 The environmental rating of EIS's is not based solely on the contents of an EIS. The EPA may use other sources of information and other interpretations of data in determining probable environmental impacts.

7.12.6 Using the EIS and other sources of information, the environmental impacts of the action are rated in one of the following four categories:

- a. LO-Lack Of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for applying mitigation measures that could be accomplished with no more than minor changes to the proposal.

b. EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided to fully protect the environment. Corrective measures may require changes to the preferred alternative or applying mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

c. EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided to adequately protect the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the No-Action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

d. EU-Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the Final EIS stage, this proposal will be recommended for referral to the CEQ.

7.12.7 In addition to rating the environmental impacts of the proposed action, EPA also rates the adequacy of an EIS's in meeting the requirements of NEPA. The categories used are described below:

a. Category 1-Adequate

EPA believes the Draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

b. Category 2-Insufficient Information

The Draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the Draft EIS, that could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

c. Category 3-Inadequate

EPA does not believe that the Draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS that should be analyzed to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the Draft EIS is adequate for the purposes of the NEPA and/or CAA Section 309 review and, thus, should be formally revised and made available for public comment in a supplemental or revised Draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

7.12.8 The application of these categories results in one of the following classifications: LO, EC-1, EC-2, EO-1, EO-2, EO-3, EU-1, EU-2, EU-3, or 3. At both ends of the rating scale (LO and 3), only the environmental or adequacy criteria are used, but in between, both environmental and adequacy criteria are presented. This is logical because if EPA has no objections (LO), the EIS as presented must also be adequate. If the EIS is inadequate (3), it may not be possible to determine whether the environmental impacts of the proposed action are environmentally unsatisfactory.

7.12.9 The results of all EPA reviews are sent directly to the lead agency and are published in the Federal Register. The Draft EIS Comment Letter, sent directly to a lead agency, specifies the overall rating of the EIS (e.g., EO-1) and provides detailed comments, usually as an attachment. The publication in the Federal Register is usually no more than three or four sentences and also contains the overall rating.

7.12.10 After the EIS is rated, EPA may take certain actions based on the rating. The nature of the typical followup action is given in Table 7-1.

Table 7-1. Followup Actions Based on U.S.
EPA EIS Rating

Category	Lead Agency Prenotification	Follow Up on Draft EIS Comment Letter
LO	None	None
EC-1, EC-2	None	Phone call
EO-1, EO-2	Phone call	Meeting
EO-3, EU-1, EU-2, EU-3, 3	Meeting	Meeting

7.12.11 For all EIS's rated EO, EU, or 3, EPA policy is to review the Final EIS to ensure that the comments were satisfactorily addressed. The results of this review are published in the Federal Register.

7.13 Cumulative Impacts

7.13.1 Cumulative impacts are defined in CEQ regulations (40 CFR §1508.7) as, "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions."

a. Cumulative impacts that are individually minor can, when combined in the same geographic area during the life of the proposed action, result in substantial adverse impacts.

b. As an example, a proposed NASA action would result in a loss of 10 hectares (25 acres) of a given habitat type at a construction site. When combined with the previous loss of 5 hectares (12 acres) of the habitat type for construction of existing facilities, the planned loss of an additional 20 hectares (49 acres) for future projects at the Center, and the loss of 200 hectares (494 acres) of the habitat for a planned shopping mall construction by a private developer in an area near the NASA Center, may result in a combined depletion of the habitat type in the region and substantially alter regional ecology or wildlife habitat.

7.13.2 Cumulative impacts must be addressed in EIS's and, as appropriate, in EA's.

7.13.3 This NPR takes into account CEQ guidance found in Considering Cumulative Effects Under the National Environmental Policy Act, Council on Environmental Quality, January 1997. This NPR does not establish new requirements for cumulative impact analyses, nor is it legally binding. Rather, it provides perspectives on and suggests a framework for a rigorous approach to identifying and analyzing cumulative impacts. It also discusses various analytical tools that are available and the approaches used by several Federal agencies.

7.14 Facility Closures

a. It may become necessary or desirable in the future for NASA to cease operation and ownership of certain NASA facilities or portions thereof, turning facility ownership over to another Federal, State, or local entity or even the private sector. NEPA applies to potential facility closures.

7.15 Conflict of Interest in Preparing NEPA Documents

7.15.1 CEQ regulations (40 CFR §1506.5 (b) and (c)) address preparation of NEPA documents (EA's and EIS's) by parties other than the agency sponsoring the action. In implementing this regulation within NASA, EA's prepared by an applicant or a third party for a NASA action must be evaluated independently by the Sponsoring Entity and local EMO.

a. The Sponsoring Entity will take responsibility for the scope and content of the EA.

b. When the action is exceptional as described in chapter 5, HQ/EMD will be consulted and must concur with the scope and content of the EA.

c. EIS's prepared for a NASA action by a contractor must follow the process outlined in chapter 6, including direct involvement by HQ/EMD, the Office of the General Counsel, and other NASA organizations, as appropriate.

7.15.2 CEQ regulations require that the contractor be chosen (a) solely by the lead agency or by the lead agency in cooperation with the cooperating agency(s) and (b) to ensure that there is no conflict of interest. For NASA EIS's, the contractor will be selected by the Sponsoring Entity. The contractor(s) will execute a disclosure statement prepared by NASA (or cooperating agency, as appropriate) specifying that they have no financial or other interest in the outcome of the project. Figure J-9 in Appendix J illustrates a sample contractor disclosure statement. The Sponsoring Entity and local EMO (and HQ/EMD if requested) will provide guidance to the contractor, participate in preparation, independently evaluate the EIS before its approval by NASA, and assume responsibility for the scope

and contents of the EIS.

7.16 Cooperative Arrangements

a. NASA often cooperates and enters into agreements with other governmental agencies, private organizations, and the general public on formal and informal levels in complying with NEPA. Informal cooperation can range from of the relationships that a local EMO has developed with State regulators, local agencies, or interest groups for discussing environmental issues of mutual interest (e.g., preservation of nesting habitat for a locally important species) to cooperative efforts that are more focused in a specific environmental area (e.g., informal consultation on a potential action NASA is planning to take). Informal cooperative arrangements such as these have developed throughout NASA, and can serve as an important and productive means to maintain good neighbor relations and to ensure that NEPA processes benefit from understanding local issues before they become problems.

b. NASA undertakes formal cooperative arrangements when working with (a) Federal and non-Federal applicants seeking to use NASA facilities and/or other NASA services and resources and (b) governmental agencies who have jurisdiction by law over the matter, are participants in the proposal, or have special expertise. Cooperative arrangements under these circumstances are addressed in section 7.16.1. A special form of cooperative arrangement is that of cooperating agency in a NEPA process (40 CFR §1501.6). The cooperating agency arrangement is often accompanied by a written document signed by, or exchanged between, all parties to the arrangement. Cooperating agency arrangements are addressed in section 7.16.2.

7.16.1 Cooperative Arrangements with Non-Federal Entities and Federal Agencies

7.16.1.1 As noted above, NASA may be requested to provide the use of land, facilities, services, or resources to a Federal or non-Federal entity. The non-Federal entity may not strictly speaking be subject to NEPA. However, because NASA will be required to approve the requested activity (i.e., NASA approval is considered a Federal action subject to NEPA review), NEPA applies. In such cases, NASA may require the non-Federal entity to assist in preparing of the NEPA documentation by developing an environmental report, gathering data, and/or preparing analyses. NASA may require the non-Federal entity to assume the cost of preparing the necessary environmental report, information, or studies. The local EMO should provide guidance as to the information and documentation required. In such cases, because NASA is responsible for NEPA compliance, it must assume responsibility for the process and for documenting preparation. Specifically, the non-Federal entity can be requested to support the process, but it cannot assume responsibility for the process. The NASA Sponsoring Entity assumes responsibility for the accuracy, technical adequacy, and use of the information and analyses generated by the non-Federal entity for the NASA NEPA document.

7.16.1.2 A Federal agency proposing to conduct an action at or within a NASA facility would be subject to the requirements of NEPA before implementing its proposal. NEPA documentation would be prepared in accordance with interagency agreement. The host NASA entity (i.e., the Sponsoring Entity) must ensure that the Federal agency prepares the necessary NEPA documentation and the process followed is adequate for NASA's purposes. The Sponsoring Entity is responsible for independently reviewing NEPA documentation prepared and determinations made by the Federal agency. If the Sponsoring Entity concurs with the determinations, the concurrence must be in writing. In appropriate instances (e.g., an EIS), NASA may wish to become a cooperating agency (see section 7.16.2). The local EMO will assist the Sponsoring Entity in making the above determinations.

7.16.2 Cooperating Agency Relationships

7.16.2.1 The concept of cooperating agencies is encouraged in CEQ regulations as a means of avoiding duplication, reducing cost, ensuring cooperation, and integrating NASA's NEPA process with other environmental review requirements. Cooperating agency relationships expedite both processes (i.e., combining NASA NEPA compliance and compliance with other applicable statutory requirements, see section 3.6).

7.16.2.2 While NASA's regulations speak to a broad range of possible interactions with other Federal, State, or local agencies, one element in particular should always be considered by the manager in charge of planning and implementing NEPA compliance for a proposed NASA activity the advisability of formally joining with another agency to prepare a NASA NEPA document (i.e., the use of cooperating agencies).

7.16.2.3 A cooperating agency is defined by CEQ regulations (40 CFR §1508.5) as ". . . any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment."

7.16.2.4 A cooperating agency may also be a State or local agency having similar qualifications (jurisdiction and/or expertise) or an Indian tribe if the environmental effects are on a reservation. A private party cannot act in the role of a cooperating agency for purposes of NEPA.

7.16.2.5 Under NASA NEPA regulations, the AAMS has the following duties regarding cooperating with other agencies:

- a. Remain aware of other Federal, State, and local activities in which NASA has expertise or jurisdiction by law,
- b. Arrange participation by NASA HQ, NASA Centers, Strategic Enterprises, or Program and Staff Offices in reviewing and commenting on other agencies' NEPA documents,
- c. Arrange participation by NASA HQ, NASA Centers, Strategic Enterprises, or Program and Staff Offices in the joint preparation of NEPA documentation by Federal, State, or local agencies,
- d. Determine, in the event that the Sponsoring Entity should wish to adopt another agency's NEPA document, that the document meets NASA's requirements,
- e. Resolve any disagreements between NASA and other agencies as to which agency has the primary responsibility for preparation of a joint NEPA document (i.e., who is the lead agency), and
- f. Serve in a consulting role to NASA HQ, NASA Centers, Strategic Enterprises, or Program and Staff Offices regarding the type of environmental information needed from a non-Federal entity for a permit, lease, easement, or other type of approval from NASA that may lead to an environmental impact; determine the extent of the cooperating party's participation in the required environmental studies and documentation.

7.16.3 Duties and Responsibilities of Lead and Cooperating Agencies

7.16.3.1 The agency with primary responsibility for the NEPA process and document preparation is the lead agency. The lead agency is required by CEQ regulations (40 CFR §1501.6) to request participation of cooperating agency(s) at the earliest possible time (see Figure 3-1), use the proposals and analyses provided by the cooperating agency(s) to the maximum extent possible consistent with its responsibility as lead agency, and meet with cooperating agency(s) upon request.

7.16.3.2 Cooperating agencies shall participate in the NEPA process at the earliest possible time; participate in scoping an EIS (see chapter 6); assume responsibility for preparing environmental information and analyses and portions of the NEPA document in its area of special expertise; make staff support available; and use its own funds (the lead agency may, to the extent permitted by funding, fund the cooperating agency's activities and analyses).

7.16.3.3 A potential cooperating agency may decline to participate to the degree requested by the lead agency or may decline entirely if other program commitments dictate. Declining an invitation to participate as a cooperating agency must be done in writing, with a copy submitted to CEQ. Before formally requesting another agency to act as a cooperating agency, the Sponsoring Entity should consult with that agency about its available resources and the role NASA desires it to undertake.

7.16.4.1 Cooperating agencies are used primarily during preparation of EIS's and occasionally in the preparation of EA's. Using cooperating agencies in a NEPA compliance activity should be carefully considered and weighed based on its ability to expedite compliance with other environmental laws and regulations and contribute to preparing a quality NEPA document.

7.16.4.2 The Sponsoring Entity considering cooperating agencies during preparation of a NASA NEPA document should consult with HQ/EMD before entering into a cooperating agency relationship (especially if NASA NEPA procedural issues are involved).

7.16.4.3 When the cooperating agency has jurisdiction by law over the action, the lead agency may be required to also satisfy all or portions of the cooperating agency's NEPA process and/or procedures in addition to its own. When an agency cooperates by virtue of special expertise related to some aspect of the action, the lead agency is not necessarily so constrained. The ground rules within which a cooperating agency relationship is entered into should be clearly understood and documented.

7.16.5 When NASA is Requested to be a Cooperating Agency

When a Sponsoring Entity receives a request to serve as a cooperating agency in another agency's NEPA process, the request shall be forwarded to the HQ/EMD. HQ/EMD will evaluate the request, coordinating with other NASA organizations and the requesting agency, as needed, and advise the AAMS. If the AAMS concurs, NASA will serve as a cooperating agency. If the agency requesting NASA's cooperation is a State or local agency, any joint NEPA document must be prepared consistent with NASA NEPA regulations. If NASA declines to participate as a cooperating agency, HQ/EMD, in coordination with the Office of the General Counsel, will communicate with CEQ, as needed.

7.17 Electronic Media

The use of electronic media to provide easier public access to official, publicly available Final NASA NEPA documents is encouraged. However, publicly posting work-in-progress documents (e.g., working drafts and internal working papers) on publicly accessible electronic media is strictly prohibited. The only NEPA or NEPA-associated documents that may be considered for public postings are completed and signed public documents such as NOI's,

NOA's, FONSI's, ROD's, and Draft and Final EA's and EIS's officially approved for publication. For NEPA documents dealing with local or Center-level actions, the local EMO will approve all public postings after coordination with the Office of the Chief Counsel. For EIS's and exceptional-action EA's, the Sponsoring Entity will not approve any public postings until after coordination with and concurrence by HQ/EMD and the Office of the General Counsel.

7.18 NEPA and Environmental Remediation Activities

NEPA documentation normally is not required for remediation actions covered by the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). NASA has adopted the concept of functional equivalency with respect to these environmental protection statutes. NASA EMO's may elect to prepare NEPA analyses on those elements of RCRA or CERCLA actions that do not fully address sources of environmental impact. It should be noted that socioeconomic impacts alone are not sufficient to initiate the need for a NEPA document.

7.19 Metrics

7.19.1 Goals

- a. Goal 1. Ensure that NASA projects and actions have integrated NEPA into the planning process.
- b. Goal 2. Ensure the timely completion of the NEPA process for projects and actions.
- c. Goal 3. Streamline the NEPA process, especially for those projects and actions of little or no environmental consequence.
- d. Goal 4. Document the incorporation of successful mitigation measures and associated cost avoidance measures, and highlight successes, which while not lending themselves to quantification, serve as valuable indicators of the integration of the NEPA process and environmental values into agency planning.

7.19.2 The local EMO's will maintain records of the following information during each government fiscal year, and will supply that information to HQ/EMD no later than 60 days after the close of fiscal year (or more frequently as agreed upon):

- a. The total number of projects/actions implemented (e.g., facility construction started, spacecraft launched, and testing program initiated) during the fiscal year that by statute or regulation required a FONSI or ROD.
- b. Of the number given in section a, indicate the number of FONSI's or ROD's that were issued before the project/action was implemented.
- c. Of the number given in section a, indicate the number of FONSI's or Final EIS's completed on time per Table 3-1.
- d. The number of categorical exclusions (CatEx's) prepared during the fiscal year, along with the reason(s) for the CatEx determinations and the type(s) of actions evaluated.
- e. A brief narrative of no more than four pages, itemizing the beneficial effects of mitigation activities undertaken in the fiscal year, specifically:
 - (1) Cost savings for which monetary estimates can reasonably be made, and
 - (2) A narrative of other benefits achieved that cannot be readily translated into monetary terms (e.g., X acres of wetland not impacted because of the ability to modify project design).

7.19.3 Collecting these data points will assist both the EMO's and HQ/EMD in evaluating the successful integration of NEPA compliance into a local and NASA-wide project planning. HQ/EMD will evaluate the data reported using the following measures:

- a. Metric 1. The level of success will be determined by the ratio of the number in section b to the number in section a.
- b. Metric 2. Progress will be measured by the ratio of of the number in section c to the number in section a.
- c. Metric 3. Potential process improvements will be identified by evaluating the information in 7.19.2d, and the improvements may lead to further selective streamlining of the CatEx process. For example, by analyzing the number and types of actions involved, and the reasons for those CatEx determinations, it may be possible to classify certain categories of actions as not requiring a written REC.
- d. Metric 4. The information from 7.19.2e provides an opportunity for each EMO to highlight success stories from a financial perspective, and other less quantifiable factors that can be used to gauge the role and effectiveness of NEPA compliance within NASA project planning and implementation.

7.19.4 The value of specific metrics may change over time due to changed conditions, full achievement of an exiting metric, identification of potential process weaknesses, or increased emphasis on certain portions of the NEPA process. Therefore, metrics associated with this guidance may be altered as a result of action by the NASA Environmental Management Board or formal revision of this guidance.

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