AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Mitigation Action Plan shall be prepared before DOE takes any action directed by the ROD that is the subject of a mitigation commitment.

(b) In certain circumstances, as specified in §1021.322(b)(1), DOE shall also prepare a Mitigation Action Plan for commitments to mitigations that are essential to render the impacts of the proposed action not significant. The Mitigation Action Plan shall address all commitments to such necessary mitigations and explain how mitigation will be planned and implemented. The Mitigation Action Plan shall be prepared before the FONSI is issued and shall be referenced therein.

(c) Each Mitigation Action Plan shall be as complete as possible, commensurate with the information available regarding the course of action either directed by the ROD or the action to be covered by the FONSI, as appropriate. DOE may revise the Plan as more specific and detailed information becomes available.

(d) DOE shall make copies of the Mitigation Action Plans available for inspection in the appropriate DOE public reading room(s) or other appropriate location(s) for a reasonable time. Copies of the Mitigation Action Plans shall also be available upon written request.

[57 FR 15144, Apr. 24, 1992, as amended at 76 FR 63787, Oct. 13, 2011]

§1021.340 Classified, confidential, and otherwise exempt information.

(a) Notwithstanding other sections of this part, DOE shall not disclose classified, confidential, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552) and 10 CFR 1004.10(b) of DOE's regulations implementing the FOIA, except as provided by 40 CFR 1506.6(f).

(b) To the fullest extent possible, DOE shall segregate any information that is exempt from disclosure requirements into an appendix to allow public review of the remainder of a NEPA document.

(c) If exempt information cannot be segregated, or if segregation would leave essentially meaningless material, DOE shall withhold the entire NEPA document from the public; however, DOE shall prepare the NEPA document, in accordance with the CEQ Regulations and this part, and use it in DOE decisionmaking.

§1021.341 Coordination with other environmental review requirements.

(a) In accordance with 40 CFR 1500.4(k) and (o), 1502.25, and 1506.4, DOE shall integrate the NEPA process and coordinate NEPA compliance with other environmental review requirements to the fullest extent possible.

(b) To the extent possible, DOE shall determine the applicability of other environmental requirements early in the planning process, in consultation with other agencies when necessary or appropriate, to ensure compliance and to avoid delays, and shall incorporate any relevant requirements as early in the NEPA review process as possible.

§1021.342 Interagency cooperation.

For DOE programs that involve another Federal agency or agencies in related decisions subject to NEPA, DOE will comply with the requirements of 40 CFR 1501.5 and 1501.6. As part of this process, DOE shall cooperate with the other agencies in developing environmental information and in determining whether a proposal requires preparation of an EIS or EA, or can be categorically excluded from preparation of either. Further, where appropriate and acceptable to the other agencies, DOE shall develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

§1021.343 Variances.

(a) *Emergency actions.* DOE may take an action without observing all provisions of this part or the CEQ Regulations, in accordance with 40 CFR 1506.11, in emergency situations that demand immediate action. DOE shall consult with CEQ as soon as possible regarding alternative arrangements for emergency actions having significant environmental impacts. DOE shall document, including publishing a notice in the FEDERAL REGISTER, emergency actions covered by this paragraph within 30 days after such action occurs; this documentation shall identify any adverse impacts from the actions taken,

further mitigation necessary, and any NEPA documents that may be required.

(b) *Reduction of time periods.* On a case-by-case basis, DOE may reduce time periods established in this part that are not required by the CEQ Regulations. If DOE determines that such reduction is necessary, DOE shall publish a notice in the FEDERAL REGISTER specifying the revised time periods and the rationale for the reduction.

(c) *Other.* Any variance from the requirements of this part, other than as provided by paragraphs (a) and (b) of this section, must be soundly based on the interests of national security or the public health, safety, or welfare and must have the advance written approval of the Secretary; however, the Secretary is not authorized to waive or grant a variance from any requirement of the CEQ Regulations (except as provided for in those regulations). If the Secretary determines that a variance from the requirements of this part is within his/her authority to grant and is necessary, DOE shall publish a notice in the FEDERAL REGISTER specifying the variance granted and the reasons.

Subpart D—Typical Classes of Actions

SOURCE: 76 FR 63787, Oct. 13, 2011, unless otherwise noted.

§ 1021.400 Level of NEPA review.

(a) This subpart identifies DOE actions that normally:

(1) Do not require preparation of either an EIS or an EA (are categorically excluded from preparation of either document) (appendices A and B to this subpart D);

(2) Require preparation of an EA, but not necessarily an EIS (appendix C to this subpart D); or

(3) Require preparation of an EIS (appendix D to this subpart D).

(b) Any completed, valid NEPA review does not have to be repeated, and no completed NEPA documents need to be redone by reasons of these regulations, except as provided in § 1021.314.

(c) If a DOE proposal is encompassed within a class of actions listed in the appendices to this subpart D, DOE shall proceed with the level of NEPA review indicated for that class of actions, unless there are extraordinary circumstances related to the specific proposal that may affect the significance of the environmental effects of the proposal.

(d) If a DOE proposal is not encompassed within the classes of actions listed in the appendices to this subpart D, or if there are extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal, DOE shall either:

(1) Prepare an EA and, on the basis of that EA, determine whether to prepare an EIS or a FONSI; or

(2) Prepare an EIS and ROD.

§ 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

(a) The actions listed in appendices A and B to this subpart D are classes of actions that DOE has determined do not individually or cumulatively have a significant effect on the human environment (categorical exclusions).

(b) To find that a proposal is categorically excluded, DOE shall determine the following:

(1) The proposal fits within a class of actions that is listed in appendix A or B to this subpart D;

(2) There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. Extraordinary circumstances are unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources; and

(3) The proposal has not been segmented to meet the definition of a categorical exclusion. Segmentation can occur when a proposal is broken down into small parts in order to avoid the appearance of significance of the total action. The scope of a proposal must include the consideration of connected and cumulative actions, that is, the