

from the public; however, the responsible official shall otherwise prepare the analysis documentation in accord with applicable regulations. (40 CFR 1507.3(c))

(h) *Incorporation by reference.* Material may be incorporated by reference into any environmental or decision document. This material must be reasonably available to the public and its contents briefly described in the environmental or decision document. (40 CFR 1502.21)

(i) *Applicants.* The responsible official shall make policies or staff available to advise potential applicants of studies or other information foreseeably required for acceptance of their applications. Upon acceptance of an application as provided by 36 CFR 251.54(g) the responsible official shall initiate the NEPA process.

§ 220.5 Environmental impact statement and record of decision.

(a) *Classes of actions normally requiring environmental impact statements*—(1) *Class 1:* Proposals to carry out or to approve aerial application of chemical pesticides on an operational basis. Examples include but are not limited to:

(i) Applying chemical insecticides by helicopter on an area infested with spruce budworm to prevent serious resource loss.

(ii) Authorizing the application of herbicides by helicopter on a major utility corridor to control unwanted vegetation.

(iii) Applying herbicides by fixed-wing aircraft on an area to release trees from competing vegetation.

(2) *Class 2:* Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area. Examples include but are not limited to:

(i) Constructing roads and harvesting timber in an inventoried roadless area where the proposed road and harvest units impact a substantial part of the inventoried roadless area.

(ii) Constructing or reconstructing water reservoir facilities in a potential wilderness area where flow regimens may be substantially altered.

(iii) Approving a plan of operations for a mine that would cause consider-

able surface disturbance in a potential wilderness area.

(b) *Notice of intent.* Normally, a notice of intent to prepare an EIS shall be published in the FEDERAL REGISTER as soon as practicable after deciding that an EIS will be prepared. Where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent may be published at a reasonable time in advance of preparation of the draft statement. A notice must meet the requirements of 40 CFR 1508.22, and in addition, include the following:

(1) Title of the responsible official(s);

(2) Any permits or licenses required to implement the proposed action and the issuing authority;

(3) Lead, joint lead, or cooperating agencies if identified; and

(4) Address(es) to which comments may be sent.

(c) *Withdrawal notice.* A withdrawal notice must be published in the FEDERAL REGISTER if, after publication of the notice of intent or notice of availability, an EIS is no longer necessary. A withdrawal notice must refer to the date and FEDERAL REGISTER page number of the previously published notice(s).

(d) *Environmental impact statement format and content.* The responsible official may use any EIS format and design as long as the statement is in accord with 40 CFR 1502.10.

(e) *Alternative(s).* The EIS shall document the examination of reasonable alternatives to the proposed action. An alternative should meet the purpose and need and address one or more significant issues related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. The following procedures are available to the responsible official to develop and analyze alternatives:

(1) The responsible official may modify the proposed action and alternative(s) under consideration prior to issuing a draft EIS. In such cases, the responsible official may consider the incremental changes as alternatives considered. The documentation of

§ 220.6

36 CFR Ch. II (7–1–10 Edition)

these incremental changes to a proposed action or alternatives shall be included or incorporated by reference in accord with 40 CFR 1502.21.

(2) The proposed action and one or more alternatives to the proposed action may include adaptive management. An adaptive management proposal or alternative must clearly identify the adjustment(s) that may be made when monitoring during project implementation indicates that the action is not having its intended effect, or is causing unintended and undesirable effects. The EIS must disclose not only the effect of the proposed action or alternative but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official during implementation whether the action is having its intended effect.

(f) *Circulating and filing draft and final environmental impact statements.* (1) The draft and final EISs shall be filed with the Environmental Protection Agency's Office of Federal Activities in Washington, DC (see 40 CFR 1506.9).

(2) Requirements at 40 CFR 1506.9 "Filing requirements," 40 CFR 1506.10 "Timing of agency action," and 40 CFR 1502.19 "Circulation of the environmental impact statement" shall only apply to the last draft and final EIS and not apply to material produced prior to the draft EIS or between the draft and final EIS which are filed with EPA.

(3) When the responsible official determines that an extension of the review period on a draft EIS is appropriate, notice shall be given in the same manner used for inviting comments on the draft.

(g) *Distribution of the record of decision.* The responsible official shall notify interested or affected parties of the availability of the record of decision as soon as practical after signing.

§ 220.6 Categorical exclusions.

(a) *General.* A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:

(1) The proposed action is within one of the categories established by the Secretary at 7 CFR part 1b.3; or

(2) The proposed action is within a category listed in § 220.6(d) and (e).

(b) *Resource conditions.* (1) Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

(i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;

(ii) Flood plains, wetlands, or municipal watersheds;

(iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;

(iv) Inventoried roadless area or potential wilderness area;

(v) Research natural areas;

(vi) American Indians and Alaska Native religious or cultural sites; and

(vii) Archaeological sites, or historic properties or areas.

(2) The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

(c) *Scoping.* If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.

(d) *Categories of actions for which a project or case file and decision memo are not required.* A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared for the following categories:

(1) Orders issued pursuant to 36 CFR part 261—Prohibitions to provide short-