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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

Ted Boling
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The Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Dear Mr. Boling:

I have attached the Department of Defense (DoD) comments on the Council on Environmental Quality's draft guidance for both the Consideration of the Effects of Climate Change and Greenhouse Gas Emissions and Exclusions and also Mitigation and Monitoring.

Thank you for the opportunity to comment on your efforts to provide guidance for the National Environmental Policy Act process in these areas.

Sincerely,

Maureen Sullivan
Director, Environmental Management

Enclosure:
As Stated

*DoD CONSOLIDATED COMMENTS
CEQ DRAFT NEPA GUIDANCE: CONSIDERATION OF THE EFFECTS
OF CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS
UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT*

Pg	Para/line	language	Comment
1	Last para, line 2	<i>CEQ proposes to advise Federal agencies to consider, in scoping their NEPA analyses, whether analysis of the direct and indirect GHG emissions from their proposed actions may provide meaningful information to decision makers and the public.</i>	<p>Recommend deleting “direct and indirect”</p> <p>This is a general statement telling agencies to determine whether analysis of GHG emissions will provide meaningful info to decision makers. Discussion of "direct" can be clarified in proposed footnote 2.</p>
1	Last para, line 4	<i>Specifically, if a proposed action would be reasonably anticipated to cause direct emissions</i>	<p>Recommend inserting a footnote #2 at “direct”</p> <p>REASON: The guidance uses definitions referred to as “scope 1” and “scope 2” GHG emissions in EO 13514, and avoids the impossible task of trying to quantify GHG emissions associated with speculative upstream and downstream emissions over which the agency has little proximate knowledge or control. At the same time, it includes emissions that, while generated outside of the agency’s immediate control (e.g., purchased electricity), are nonetheless directly attributable to the agency’s proposed action and can be quantified using fuel usage algorithms.</p> <p>Add footnote 2: Direct emissions, in the context of this guidance, means direct GHG emissions from sources that are owned or controlled by the agency and direct GHG emissions resulting from generation of electricity, heat, or steam purchased by an agency. In assessing direct emissions, an agency should look at the consequences of actions over which it has control or authority. <i>Public Citizen</i>, 541 U.S. at 768.</p>

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2	Top of page, first sentence	<i>25,000 metric tons or more of CO2-equivalent GHG emissions on an annual basis, agencies should consider this an indicator that a quantitative and qualitative assessment may be meaningful to decision makers and the public.</i>	Delete “quantitative and” Insert “of impacts” following the term “assessment” Since a quantitative analysis would already have been done to determine whether the project will be above or below the indicator of 25,000 tons per year that only leaves a qualitative assessment. Also, once the quantification is done, the assessment should be of the impacts.
2	Para 3, line 4	<i>From a quantitative perspective, there are no dominating sources and fewer sources that would even be close to dominating total GHG emissions. The global climate change problem is much more the result of numerous and varied sources, each of which might seem to make a relatively small addition to global atmospheric GHG concentrations.</i>	Change “fewer” to “few”
2	Para 3,	<i>CEQ proposes to recommend that environmental documents reflect this global context and be realistic in focusing on ensuring that useful information is provided to decision makers for those actions that the agency finds are a significant source of GHGs</i>	Replace “finds are a significant source of GHGs” with ” determines warrants assessment” The guidance states (para 3 of Sect I) the indicator (that an analysis may be warranted 25,000 tons per year) is not a threshold of significance; recommend the remaining guidance remain consistent with that concept.
Pgs 1 and 2		<i>... if a proposed action would be reasonably anticipated to cause direct emissions of 25,000 metric tons or more of CO2-equivalent GHG emissions on an annual basis, agencies should consider this an indicator that a quantitative and qualitative assessment may be meaningful to decision makers and the public. For long-term actions that have annual direct emissions of less than 25,000 metric tons of CO2-equivalent, CEQ encourages Federal agencies to consider whether the action's long-term emissions should receive similar analysis. CEQ does not propose this as</i>	Add following para “NEPA analysis for agency actions involving direct emissions of GHGs” with: "Where an agency determines it is appropriate to conduct an assessment of GHG emissions, the agency should conduct the assessment using methodologies and emission factors adopted by Federal agencies for the purpose of evaluating project-level GHG emissions."

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		<p><i>an indicator of a threshold of significant effects, but rather as an indicator of a minimum level of GHG emissions that may warrant some description in the appropriate NEPA analysis for agency actions involving direct emissions of GHGs.</i></p>	
2	Para 4	<p><i>Finally, CEQ seeks public comment on several issues not directly addressed by this draft guidance, including the assessment of climate change effects of land management activities, and means by which agencies can tailor the amount of the documentation prepared for NEPA analysis so that it is proportional to the importance of climate change to the decision-making process.</i></p>	<p>Rewrite as follows:</p> <p>“Finally, agencies should tailor the scope of the amount of the documentation prepared for this analysis of climate change so that it is focused and within the context proportional to the importance of climate change to the decision to be made.”</p>
2	Last para , line 4	<p><i>Accordingly, where a proposed Federal action that is analyzed in an EA or EIS would be anticipated to emit GHGs to the atmosphere in quantities that the agency finds may be meaningful, it is appropriate for the agency to quantify and disclose its estimate of the expected annual direct and indirect GHG emissions in the environmental documentation for the proposed action.</i></p>	<p>Recommend delete “and indirect”</p> <p>See proposed footnote 2.</p>
2, 4	2, 1, respectively		<p>Comment - To describe the impact of an agency action on GHG emissions, once an agency has determined that it is appropriate; CEQ proposes that agencies should consider quantifying those emissions using referenced technical documents, including one “for quantification of emissions and removals from terrestrial carbon sequestration and various other project types.” At the same time, the guidance goes on to say that “Land management techniques, including changes in land use or land management strategies, lack any established Federal protocol for assessing their effect on atmospheric carbon release and sequestration at a landscape scale. Therefore, at this time, CEQ seeks public comment on this issue but has not identified any protocol that is useful and appropriate for NEPA analysis of a proposed land and resource management actions.” These statements are contradictory and lead to confusion as to what</p>

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			<p>is expected of federal agencies with respect to addressing timbering operations or reforestation activities that are standalone projects or are part of larger proposed actions.</p> <p>Recommendation – CEQ should refrain from requiring agencies to quantify emissions related to land management techniques for GHG analysis until specific sequestration, forestry and other management GHG modeling is available.</p> <p>Proposed Text: “Agencies may exclude GHG emissions quantification for and management techniques within NEPA analysis until specific sequestration, forestry and other management GHG modeling is available.</p>
3	Para 1, line 9	<i>CEQ does not propose this reference point for use as a measure of indirect effects, the analysis of which must be bounded by limits of feasibility in evaluating upstream and downstream effects of Federal agency actions.</i>	<p>Recommend delete sentence “CEQ does not . . . “</p> <p>Confuses indirect emissions with indirect effects. It is important to first determine which GHG emissions should be quantified to determine whether the agency believes analysis of effects is warranted. Proposed footnote 2 (discussed above) can provide the feasible, relevant scope of emissions for quantification. Realistically, the effects from the emissions will essentially all be cumulative effects, because GHG emissions from single sources are small relative to aggregate emissions, and GHGs, once emitted from a given source, become well mixed in the global atmosphere and have a long atmospheric lifetime.</p>
3	Para 1 line 6	<i>Where the proposed activity is subject to GHG emissions accounting requirements, . . .</i>	<p>Replace “activity is subject” with “activity would be subject”</p> <p>NEPA analysis is prospective.</p>
3	Para 2, line 1	<i>In the agency’s analysis of direct effects, it would be appropriate to: . . .</i>	<p>Recommend delete the term “direct”</p> <p>See comment above regarding evaluating effects (as opposed to emissions).</p>
3	Last para, line 1	<i>Emissions from many proposed Federal actions would not typically be expected to produce an environmental effect that would</i>	<p>Replace the term “Emissions” with “GHG emissions”</p>

Pg	Para/line	language	Comment
		<i>trigger or otherwise require a</i>	
3	Last para	<i>To describe the impact of an agency action on GHG emissions, once an agency has determined that this is appropriate, . . .</i>	Agencies need a simple statement regarding acceptable methodology for quantification. Recommend replace “To describe the impact of an agency action on GHG emissions, once an agency has determined that this is appropriate,” With “When agencies quantify GHG emissions, CEQ recommends that they use the”
4	Line 15 following bullet #3		It is important to include decreases in GHG emissions that may result from proposed actions, and focus on the net gain of GHG emissions. Add following text: “The quantification of anticipated GHG emissions from the project should show the anticipated net change in emissions based on movement of emissions from one location to another, such as under Base Realignment and Closure moves or when replacing existing equipment.
5	Para 1, Line 2	<i>As proposed in draft guidance above, for Federal actions that require an EA or EIS the direct and indirect GHG emissions from the action should be considered in scoping and, to the extent that scoping indicates that GHG emissions warrant consideration by the decision maker, quantified and disclosed in the environmental document.</i>	Delete “and indirect” See proposed footnote 2.
5	Para 1/line 4	<i>In assessing direct emissions, an agency should look at the consequences of actions over which it</i>	Recommend this sentence be moved to footnote 2 (previous comment)

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		<i>has control or authority. Public Citizen, 541 U.S. at 768.</i>	
7	4/3		<p>Comment - The adoption of a program to monitor climate change effects should not be a requirement under the guidance until more reliable climate change models become available. Without such tools it will be wasteful to consider long term monitoring strategies when reliable information on the particular effects of climate change (e.g., precipitation, sea levels, and habitat changes) expected at a particular project site is not available.</p> <p>Recommendation - Modify the discussion (addition underlined) as follows: "In cases where adaptation to the effects of climate change is important, the significant aspects of these changes should be identified in the agency's final decision, <u>but the</u> and-adoption of a monitoring program should <u>not</u> be considered <u>until reliable climate change models become available.</u>"</p>
10	Para 2 and 3	<p><i>As explained in prior CEQ guidance, and described in its handbook Considering Cumulative Effects, . . .</i></p> <p><i>The purpose of cumulative effects analysis is to document agency consideration . . .</i></p>	<p>GHG impacts are essentially a cumulative impact problem of the additive effect of GHG accumulation from many sources. The region of influence of the problem is essentially global. CEQs guidance on when/how to assess GHG as a cumulative issue versus a direct/indirect impact issue [p3 & p11] does not clearly define how the cumulative nature of GHG impacts should be handled. On p 11 the CEQ guidance states that agencies can limit the scope of their cumulative effects analysis based on "practical" considerations. CEQ should provide additional clarification for what is expected/required.</p>
12		<p><i>7. Should CEQ provide guidance to agencies on determining whether GHG emissions are "significant" for NEPA purposes. At what level should GHG emissions be considered to have significant cumulative effects. In this context, commenters may wish to consider the Supreme Court decision in Massachusetts v. EPA, 549 U.S. 497, 524 (2007).</i></p>	<p>CEQ has requested comments from Federal agencies on whether they should provide guidance for GHG significance thresholds for Federal Agencies [Pg 12 Item #7]</p> <p>Significance determination, either cumulatively or directly, could have far-reaching consequences for all other Federal Agency proposals in a certain geographic area or nationwide. Recommend that CEQ discuss with agencies prior to prescribing significance thresholds or criteria for GHG.</p>

*DoD CONSOLIDATED COMMENTS
CEQ DRAFT NEPA GUIDANCE:
DRAFT GUIDANCE FOR NEPA MITIGATION AND MONITORING*

Pg	Sec/Para /line	Guidance Language	Comment
	General		<p>Mitigation is legally required in only two instances: (1) where mitigation is necessary to support a FONSI and the agency does not wish to prepare an EIS; and (2) where mitigation is required as a condition of a permit or authorization required by another statute (such as the ESA, CWA 404, NHPA, etc.). Even in this second circumstance, the parallel process may not be completed until after the environmental analysis has been completed and may not be available for inclusion in the NEPA analysis.</p> <p>An agency may choose to adopt a mitigation strategy in its ROD simply to reduce the impact of its proposed action (e.g., to reduce the likelihood of the action being referred to CEQ under Part 1504). In such a case, the ROD commitment would require the agency to act to implement the mitigation and monitor its implementation.</p>
	General		<p>This guidance document is more confusing than it should be because it does not clearly distinguish the mandatory role of mitigation in support of a “mitigated FONSI” from the discretionary role of mitigation in all other circumstances. This confusion could be eliminated either by limiting the scope of this guidance document to only the mitigated FONSI situation (which would clear up the long-standing inconsistency between the CEQ’s 1981 guidance in the “Forty Most Asked Questions” and the case law that has been handed down since), or by revising this guidance document by separating the discussion of mitigation in the context of mitigated FONSI from the discussion of mitigation where an EIS has been prepared. Unless one of these two courses of action is taken, this guidance will continue to suffer from overly broad and inaccurate statements concerning the binding nature of mitigation commitments (commitments that are binding with respect to mitigated FONSI, but generally not binding in other circumstances).</p>
	General		<p>Related to the discussion of mitigation where an EIS has been prepared, the guidance needs to acknowledge and discuss the implications of the limited holding in <i>Robertson v. Methow Valley Citizens Council</i>, 109 S. Ct. 1835 (1989), as well as include a much more comprehensive discussion of whether and under what circumstances agency mitigation commitments not related to a mitigated FONSI may be enforced (i.e., those committed to in a ROD or a FONSI not dependent on mitigation measures).</p>

Pg	Sec/Para /line	Guidance Language	Comment
2	Sec II Para 1 3rd sentenc e	<i>“...those mitigation measures that are adopted by the agency should be identified as binding commitments...”</i>	<p>Recommend the sentence be revised as follows: “...those mitigation measures that are selected for implementation as part of the agency’s decision ...”</p> <p>Clarify that only mitigation measures that are (1) required to reduce the level of significance or (2) are selected as part of the agency’s decision are binding commitments</p>
4	Sect II, A(3) Para 1/Line 2e	<i>“... that mitigation to achieve an environmentally preferable outcome, or commits ...”</i>	<p>Recommend revision as follows: “... that mitigation as part of its decision, or commits...”</p> <p>Clarify that only mitigation measures that are (1) required to reduce the level of significance or (2) are selected as part of the agency’s decision are binding commitments.</p>
4	Sec 3 Line 17	<i>If funding for implementation of mitigation is not available at the time the decision on the proposed action and mitigation measures is made, then the impact of a lack of funding and resultant environmental effects if the mitigation is not implemented warrant disclosure in the EA or EIS.</i>	<p>Recommend replacing paragraph with:</p> <p>“CEQ views the commitment to funding the implementation of required mitigation as critical piece of ensuring informed public decision making and full NEPA compliance. CEQ recognizes that Agencies may not be able to identify funds from future budgets to dedicate for mitigation at the time of the decision. If funding for implementation of mitigation is not identified at the time the decision, agencies shall disclose in the EA or EIS how the implementation of mitigation will be funded and the associated impacts if the mitigation is not successful.”</p>
6	Sec II C. 2d para	<i>Consistent with CEQ regulations, the FOIA requires agencies to make available, through “computer telecommunications” (e.g., agency websites), releasable NEPA documents and monitoring results which, because of the nature of their subject matter, are likely to become the subject of FOIA requests. 5 U.S.C. § 552(a)(2); 40 C.F.R. § 1506.6(f).</i>	<p>Recommend deleting sentence.</p> <p>The discussion is confusing to the reader - it goes back and forth between NEPA and FOIA requirements. The citations provided do not actually link NEPA and FOIA requirements. NEPA states that EIS’s and comments from federal agencies on EIS’s are to be made available to the public; citation to this provision is sufficient.</p>
6	Sec II.C		The discussion of FOIA is somewhat misleading. FOIA generally requires

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	Para 3		federal agencies to make available to the public existing records; FOIA does not require federal agencies to create new records unless an independent rationale for doing so exists. Whether intended or not, this subsection implies that FOIA provides support for the proposition that federal agencies ought to undertake monitoring reporting in order to create records that may thereafter be provided to the public. In our view, reliance on FOIA for such support is misplaced. We acknowledge the value of mitigation monitoring and recordkeeping to give the environmental planning and adaptive management processes greater transparency and credibility; we nonetheless see reliance on FOIA for the proposition that such records must or ought to be created as inappropriate “bootstrapping.”
6	3 rd , 1 st sentence	<i>It is the responsibility of the lead agency to make the results of relevant monitoring available to the public. 40 C.F.R. § 1505.3(d).</i>	Consistent with 40 CFR §1505.3(d), sentence should read “Upon request, it is the responsibility of the lead agency to make the results of relevant monitoring available to the public.”
7	Appendix a, 1 st para, 3 ^d & 4 th sentences	<i>“However, when the analysis proceeds to an EA or EIS, Army regulations require that any mitigation measures be “clearly accessed and those selected for implementation will be identified in the FNSI or the ROD.” 32 C.F.R. § 651.15(a)(5)(b). This is notable as the mitigation measures are binding commitments documented in the agency NEPA decision.”</i>	<p>Recommend the 2 sentences be revised as follows: “However, when the analysis proceeds to an EA or EIS, Army regulations require that any mitigation measures be ‘clearly assessed and those selected for implementation will be identified in the FNSI or the ROD. The proponent must implement those identified mitigations, because they are commitments made as part of the Army decision.’ 32 C.F.R. 651.15(b). This is notable as the mitigation measures adopted as part of the agency decision are binding commitments documented in the agency decision document.”</p> <p>Reason: While the guidance accurately quotes the Army regulation, the next explanatory sentence from the Army regulation should be included as well. The sentence makes more clear that it is the decision to include mitigation that makes it a binding commitment, rather than the analysis of potential mitigation alternatives, or the fact that the mitigation might have an environmentally preferable outcome.</p>
7	Appendix a, 1 st para, last citation	32 C.F.R. 651.15(a)(5)(c)	Should be 32 CFR 651.15(c)

Pg	Sec/Para /line	Guidance Language	Comment
7	Appendix a, 2d para, 1 st sentence	<i>“...the requirement to fully fund and implement proposed mitigation measures.”</i>	<p>1. Change to read: “...the requirement to fully fund and implement adopted mitigation measures.”</p> <p>2. The two citations should be 32 CFR 651.15(d).</p> <p>Reason: The Army is committed to budgeting and funding the mitigation measures it adopts as part of its decision, not all mitigation measures that are proposed or evaluated.</p>
7	Appendix b, 1 st para	<i>32 CFR 651.15(a)(5)(i) and 32 CFR 651.15(a)(5)(h)(1-4)</i>	1 st citation should be 32 CFR 651.15(i) and the 2d citation should be 32 CFR 651.15(h)(1)-(4).
8	Appendix b, 1 st para	<i>32 CFR 651.15(a)(i)(1)</i>	Should be 32 CFR 651.15(i)
8	Appendix b, 2d para. 5 th sentence	<i>“According to the Army regulations, if any “identified mitigation measures do not occur, so.....”</i>	<p>Recommend revision as follows: “In the context of a mitigated FNSI, the Army regulations provide that if any ‘identified mitigation measures do not occur, so...”</p> <p>Reason: The paragraph addresses potential unexpected environmental outcomes discovered in monitoring, while the quoted Army regulation addresses the need to prepare an EIS if mitigation specified in a “mitigated FNSI” does not occur.</p>
8	Appendix c, 2d sentence	<i>“Its regulations require the entity proposing the action to ...”</i>	<p>Recommend revision as follows: “Its regulations place responsibility on the entity proposing the action to ...”</p> <p>Reason: This more closely reflects the statement in the Army regulations.</p>