

Introductory
Thoughts -
Understanding CEQ's
Recent Guidance on
Considering Green
House Gas Emissions
and Climate Change
in NEPA


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CEQ Climate Change Guidance



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Part IV

Council on Environmental Quality

Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews; Notice




February 18, 2010

MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: MICHAEL H. SUTLEY, Chair, Council on Environmental Quality

SUBJECT: NEPA GUIDANCE ON CONSIDERATION OF CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS

Environmental Quality (CEQ) provides this guidance to help explain how agencies of the Federal Government should analyze and document the potential effects of a proposed action on the environment, including greenhouse gas (GHG) emissions and climate change. This guidance is intended to help agencies understand the requirements of the National Environmental Policy Act (NEPA) and the CEQ Regulations Implementing the Procedural Provisions of NEPA (CEQ Regulations), 40 C.F.R. parts 1500-1508, and to advise Federal agencies that they should consider the potential effects of a proposed action on the environment, including GHG emissions and climate change, and to address these issues in their analyses and documents produced in the review process. This guidance provides information about the environmental effects of a proposed action on the environment, including GHG emissions and climate change, and provides information about the environmental effects of a proposed action on the environment, including GHG emissions and climate change.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

August 1, 2016

MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: CHRISTINA GOLDFUSS
 COUNCIL ON ENVIRONMENTAL QUALITY

SUBJECT: Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews

I. INTRODUCTION

The Council on Environmental Quality (CEQ) issues this guidance to assist Federal agencies in their consideration of the effects of greenhouse gas (GHG) emissions¹ and climate change when evaluating proposed Federal actions in accordance with the National Environmental Policy Act (NEPA) and the CEQ Regulations Implementing the Procedural Provisions of NEPA (CEQ Regulations).² This guidance will facilitate compliance with existing NEPA requirements, thereby improving the efficiency and consistency of reviews of proposed Federal actions for agencies, decision makers, project proponents, and the public.³ The guidance provides Federal agencies a common

¹ For purposes of this guidance, CEQ defines GHGs in accordance with Section 19(m) of Exec. Order No. 13693, Planning for Federal Sustainability in the Next Decade, 80 Fed. Reg. 15869, 15882 (Mar. 25, 2015) (carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride, and sulfur hexafluoride). Also for purposes of this guidance, "emissions" includes release of stored GHGs as a result of land management activities affecting terrestrial GHG pools such as, but not limited to, carbon stocks in forests and soils, as well as actions that affect the future changes in carbon stocks. The common unit of measurement for GHGs is metric tons of CO₂ equivalent (not CO₂-e).

² See 42 U.S.C. 4321 et seq.; 40 CFR Parts 1500-1508.

³ This guidance is not a rule or regulation, and the recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances. This guidance does not change or substitute for any law, regulation, or other legally binding

Executive Order (EO) 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis* (January 20, 2021)

- Fulfill Accounting for Benefits of Reducing Climate Pollution:
 - Established an Interagency Working Group on the Social Cost of Greenhouse Gases
 - Preliminary cost estimates by February, 2021; longer-term work directed on updated cost estimates
- Revokes Draft CEQ Climate Change Guidance issued June 26, 2019
- Directs CEQ to “review, revise, and update its final 2016 NEPA Climate Change Guidance (rescinded by President Trump in 2017)

CEQ Publishes Interim NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change in the Federal Register – January 9, 2023

period, and successive reports shall be due annually on the same date thereafter. Without limitation, Peloton acknowledges and agrees that failure to make such timely and accurate reports as required by this Agreement and Order may constitute a violation of Section 19(a)(3) of the CPSA and may subject the Firm to enforcement under section 22 of the CPSA.

36. Notwithstanding and in addition to the above, Peloton shall promptly provide written documentation of any changes or modifications to its compliance program or internal controls and procedures, including the effective dates of the changes or modifications thereto. Peloton shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials and personnel deemed necessary by staff to evaluate Peloton's compliance with the terms of the Agreement.

37. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

38. Peloton represents that the Agreement:

- (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;
- (ii) has been duly authorized; and
- (iii) constitutes the valid and binding obligation of Peloton, enforceable against Peloton in accordance with its terms. The individuals signing the Agreement on behalf of Peloton represent and warrant that they are duly authorized by Peloton to execute the Agreement.

39. The signatories represent that they are authorized to execute this Agreement.

40. The Agreement is governed by the laws of the United States.

41. The Agreement and the Order shall apply to, and be binding upon, Peloton and each of its parents, successors, transferees, and assigns; and a violation of the Agreement or Order may subject Peloton, and each of its parents, successors, transferees, and assigns, to appropriate legal action.

42. The Agreement, any attachments, and the Order constitute the complete agreement between the parties on the subject matter contained therein.

43. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be

construed against any party, for that reason, in any subsequent dispute.

44. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

45. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Peloton agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

(Signatures on next page)

PELTON INTERACTIVE, INC.

Dated: 12/8/22

By: /s/Barry McCarthy
Barry McCarthy, Peloton Interactive, Inc.,
CEO & President

Dated: 12/9/2022

By: /s/Erin M. Bosman
Erin M. Bosman, Morrison Foerster LLP,
Counsel to Peloton Interactive, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Mary B. Murphy, Director
Leah Ippolito, Supervisory Attorney
Michael J. Rogal, Trial Attorney

Dated: 12/14/22

By: /s/Michael J. Rogal
Michael J. Rogal, Trial Attorney, Division of
Enforcement and Litigation, Office of
Compliance and Field Operations

United States of America Consumer
Product Safety Commission

In the Matter of: PELTON
INTERACTIVE, INC.

CPSC Docket No.: 23-C0001

Order

Upon consideration of the Settlement Agreement entered into between Peloton Interactive, Inc. ("Peloton"), and the U.S. Consumer Product Safety Commission ("Commission" or "CPSC"), and the Commission having jurisdiction over the subject matter and over Peloton, and it appearing that the Settlement Agreement and the Order are in the public interest, the Settlement Agreement is incorporated by reference and it is:

Provisionally accepted and provisional Order issued on the 28th day of December, 2022.

By Order of the Commission.

/s/Alberta Mills
Alberta E. Mills,

Secretary, U.S. Consumer Product Safety
Commission.

[FR Doc. 2023-00146 Filed 1-6-23; 8:45 am]

BILLING CODE 6355-01-P

COUNCIL ON ENVIRONMENTAL QUALITY

[CEQ-2022-0005]

RIN 0331-AA06

National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change

AGENCY: Council on Environmental
Quality.

ACTION: Notice of interim guidance;
request for comments.

SUMMARY: The Council on Environmental Quality (CEQ) is issuing this interim guidance to assist agencies in analyzing greenhouse gas (GHG) and climate change effects of their proposed actions under the National Environmental Policy Act (NEPA). CEQ is issuing this guidance as interim guidance so that agencies may make use of it immediately while CEQ seeks public comment on the guidance. CEQ intends to either revise the guidance in response to public comments or finalize the interim guidance.

DATES: This interim guidance is effective immediately. CEQ invites interested persons to submit comments on or before March 10, 2023.

ADDRESSES: You may submit comments, identified by docket number CEQ-2022-0005, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202-456-6546.
- **Mail:** Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503.

All submissions received must include the agency name, "Council on Environmental Quality," and the docket number, CEQ-2022-0005. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Do not submit electronically any information you consider to be private, Confidential Business Information (CBI), or other information, the disclosure of which is restricted by statute.

FOR FURTHER INFORMATION CONTACT:
Jomar Maldonado, Director for NEPA,
202-395-5750 or
Jomar.MaldonadoVazquez@ceq.eop.gov.

High-Level Summary of the Interim Guidance

- CEQ states "the U.S. is facing a **profound climate crisis**" and "climate change is a **defining national global environmental challenge of this time**, threatening **broad and potentially catastrophic impacts** to the human environment."
- 2023 CEQ Interim Guidance is **not a regulatory** document, but is a **guidance** document
- CEQ states federal agencies **should** use the new guidance to inform NEPA reviews for **all new proposed actions**
- CEQ **does not expect** agencies to apply the new guidance to **"concluded NEPA reviews and actions for which a Final EIS or EA has been issued."**
- Agencies **should consider** applying the guidance to **actions in the EIS or EA preparation stage**

High-Level Summary of the Interim Guidance

- Agencies should consider in their NEPA analyses:
 - Potential effects of a proposed action on climate change
 - Potential effects of climate change on:
 - The proposed action itself
 - Relevant resources impacted by the action that would be impacted by climate change
- For impacts of the proposed action on climate change:
 - CEQ states: NEPA reviews should quantify proposed actions' GHG emissions and relevant climate impacts, and identify alternatives and mitigation measures to avoid or reduce GHG emissions

High-Level Summary of the Interim Guidance

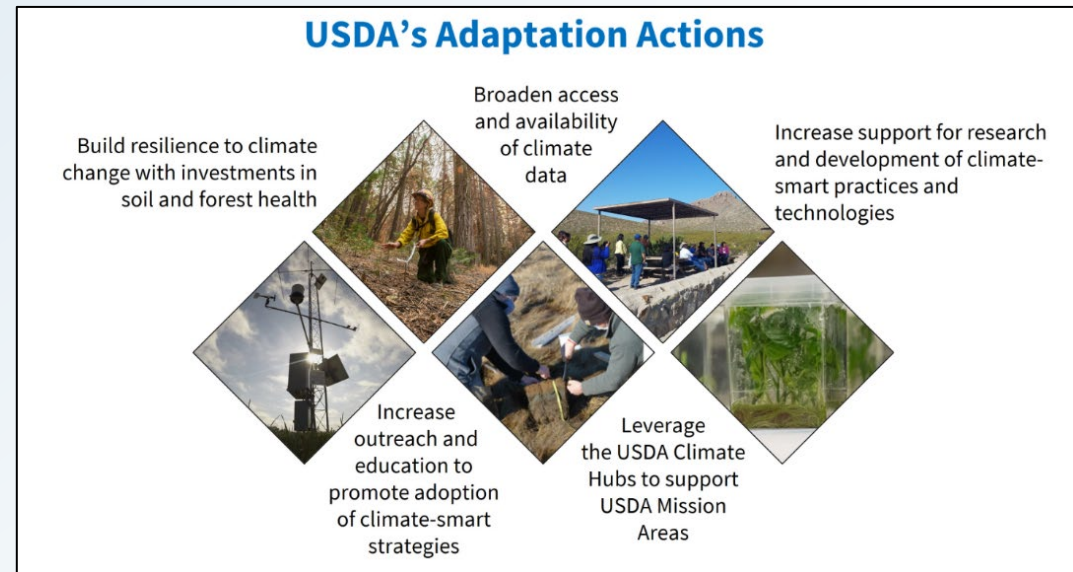
- For impacts to climate change from GHG emissions, CEQ recommends: "the use of best available social cost of GHG emissions...to translate climate impacts into the more accessible metric of dollars."
- Guidance directly links climate change impacts with environmental justice concerns
- No threshold provided for when to quantify GHG emissions; however, guidance does state:
 - "Agencies should quantify the reasonably foreseeable direct and indirect GHG emissions of their proposed actions and reasonable alternatives and the no action alternative."

High-Level Summary of the Interim Guidance

- Guidance **does not establish any specific quantity** of GHG emissions as a **significant impact** under NEPA
- **In-depth analyses** of GHG emissions are not necessary "for some proposed actions in the **renewable energy** and infrastructure sectors"
- Agencies should explain how proposed actions and alternatives **would help meet or detract from achieving relevant climate action goals and commitments**
- Agencies should: "**evaluate reasonable alternatives** that may have **lower** GHG emissions"
- **Agency NEPA Regulations Updates**: "CEQ will review any agency proposals for revised NEPA procedures, including **any revision of existing categorical exclusions**, in light of this guidance."

High-Level Summary of the Interim Guidance

- Guidance has a section on how to deal with **biogenic sources of GHG emissions** as well as **sequestration benefits** for certain actions
- Guidance has a section on **climate resiliency and adaptation** – includes discussion on how to best incorporate in a NEPA analysis and recommends agencies consider mitigation measures for these types of impacts



Questions to Consider

- Guidance vs. Regulations/Statute
- Thresholds
 - For quantitative over qualitative
 - For significance
 - De minimis level?
- Analysis – indirect impacts
 - Upstream/downstream – reasonable foreseeability/chains of causation
 - Double/triple counting potential
- Renewable energy projects get a hall pass?
- Impacts of climate change on proposed actions and resources affected by the action
 - Further guidance/direction needed?