

**COMMENTS OF THE ATTORNEYS GENERAL OF  
NEW YORK, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE,  
THE DISTRICT OF COLUMBIA, ILLINOIS, MAINE, MARYLAND, NEW  
JERSEY, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT,  
WASHINGTON, THE CORPORATION COUNSEL OF THE CITY OF NEW  
YORK, AND THE DISTRICT COUNSEL OF THE BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT**

August 14, 2023

VIA ELECTRONIC MAIL

Mr. Davon Collins  
Environmental Counsel  
United States Postal Service  
475 L'Enfant Plaza SW  
Office 6606  
Washington, DC 20260-6201  
NEPA@usps.gov

**Re: Draft Supplemental Environmental Impact Statement (SEIS) for  
Next Generation Delivery Vehicles (NGDV) Acquisitions (June  
30, 2022)**

Dear Mr. Collins:

The Attorneys General of New York, California, Connecticut, Colorado, Delaware, the District of Columbia, Illinois, Maine, Maryland, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, the Corporation Counsel of the City of New York, and the District Counsel of the Bay Area Air Quality Management District (collectively, States) submit these comments on the United States Postal Service's (USPS or Postal Service) June 30, 2023 Draft Supplemental Environmental Impact Statement for its Next Generation Delivery Vehicles Acquisitions program (Draft SEIS).<sup>1</sup> While the States support the Postal Service's progress towards acquiring a greater percentage of electric vehicles for its delivery fleet, we continue to object to (1) the Postal Service's commitment of resources before completing environmental review, and (2) its failure to consider a full range of reasonable alternatives as required by the National Environmental Policy Act (NEPA).

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<sup>1</sup> 88 Fed. Reg. 42401 (June 30, 2023).

Both defects continue to mean that the Postal Service should pause its contract with Oshkosh Defense, LLC and stop any further vehicle orders until it completes the required environmental review. The review should appropriately consider higher percentages of electric vehicles than the 62 percent determination that the Postal Service announced in December 2022. The review should likewise consider and fully analyze updated legal requirements and information addressing the climate crisis.

## Statutory and Regulatory Background

The Postal Service is required to explore and examine all reasonable alternatives pursuant to NEPA, regulations promulgated pursuant to NEPA, and the Postal Service’s own regulations interpreting its NEPA obligations.

### A. NEPA

The National Environmental Policy Act (“NEPA”) “is our basic national charter for protection of the environment,”<sup>2</sup> with two fundamental purposes: (1) to guarantee that an agency takes a “hard look” at the consequences of its actions before the action occurs by ensuring that “the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts”; and (2) to ensure that “the relevant information will be made available to the larger audience that may also play a role in both the decision making process and the implementation of that decision.”<sup>3</sup>

NEPA requires the preparation of an environmental impact statement (EIS) for any “major federal action significantly affecting the quality of the human environment.”<sup>4</sup> In preparing the EIS, NEPA requires federal agencies to take a “hard look,” which involves considering the direct, indirect, and cumulative impacts of their proposed actions.<sup>5</sup> When a proposed action has a potential adverse impact on minority or low-income populations, agencies must include an environmental justice analysis as part of this hard look.<sup>6</sup>

NEPA requires that federal agencies provide a “detailed statement” regarding the “alternatives to the proposed action.”<sup>7</sup> Agencies must explore and evaluate all

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<sup>2</sup> 42 U.S.C. § 4321, *et seq.*; *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 734 (9th Cir. 2020).

<sup>3</sup> *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 734 (9th Cir. 2020).  
*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989).

<sup>4</sup> 42 U.S.C. § 4332(C).

<sup>5</sup> *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002).

<sup>6</sup> *See* Exec. Order No. 12898, § 1-101 of Feb. 11, 1994; 59 Fed. Reg. 7629 (Feb. 16, 1994); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1330 (D.C. Cir. 2021) (reviewing challenge to agency’s environmental justice analysis under NEPA).

<sup>7</sup> 42 U.S.C. § 4332(C)(iii). *California ex rel. Lockyer v. U.S. Dep’t of Agric.*, 459 F. Supp.2d 874, 905 (N.D. Cal. 2006).

reasonable alternatives that relate to the purposes of the project and discuss the reasons for eliminating any alternatives from detailed study.<sup>8</sup> The existence of “a viable but unexamined alternative renders [an] environmental impact statement inadequate.”<sup>9</sup>

NEPA requires accurate and current information, which the agency must disclose to the public. “[A]n agency may not rely on incorrect assumptions or data.”<sup>10</sup> These “disclosure requirement[s] obligate the agency to make available to the public high quality information, including accurate scientific analysis, expert agency comments and public scrutiny, before decisions are made and actions are taken.”<sup>11</sup>

NEPA prohibits an agency from committing resources to a particular course of action prior to completing its environmental review,<sup>12</sup> meaning the agency must “prepare NEPA documents ... before any irreversible and irretrievable commitment of resources.”<sup>13</sup> This “point of commitment” constituting an irreversible and irretrievable commitment of resources can occur when an agency “sign[s] the contract” with a project proponent “and then work[s] to effectuate the Agreement.”<sup>14</sup>

B. Postal Service regulations: consideration of alternatives in an EIS “is vitally important.”<sup>15</sup>

The Postal Service’s specific NEPA procedures (39 C.F.R. Part 775) recognize its responsibilities to “[i]nterpret and administer applicable policies, regulations, and public laws of the United States in accordance with the policies set forth in [NEPA] and the NEPA Regulations.”<sup>16</sup>

The same regulations stress that consideration of alternatives in an EIS “is vitally important”<sup>17</sup> and that its policy must “[e]mphasize environmental issues and alternatives in the consideration of proposed actions,” to “identify and assess reasonable alternatives to proposed actions in order to avoid or minimize adverse

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<sup>8</sup> See 40 C.F.R. § 1502.14.

<sup>9</sup> *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 814 (9th Cir. 1999).

<sup>10</sup> See Exec. Order No. 12898, § 1-101, 59 Fed. Reg. 7629 (Feb. 16, 1994); *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005).

<sup>11</sup> *Ctr. for Bio. Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1167 (9th Cir. 2003).

<sup>12</sup> See 40 C.F.R. § 1502.2(f) (“Agencies shall not commit resources prejudicing selection of alternatives before making a final decision”). See also *id.* § 1506.1 (headed “Limitations on actions during NEPA process”).

<sup>13</sup> *Metcalfe v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000).

<sup>14</sup> *Id.*

<sup>15</sup> 39 C.F.R. § 775.11(c)(5).

<sup>16</sup> *Id.* § 775.2(a).

<sup>17</sup> *Id.* § 775.11(c)(5).

impacts on the environment,” and to “[u]se all practicable means to protect, restore, and enhance the quality of the human environment.”<sup>18</sup>

## **Factual Background**

The Draft SEIS analyzes the Postal Service’s current plans for an evolving replacement program for its nationwide delivery vehicle fleet. Unfortunately, it continues the Postal Service’s unlawful past practice of making decisions first and then analyzing only an unreasonably limited set of alternatives afterwards.

### **A. The Postal Service’s Contract with Oshkosh and Subsequent NEPA Review**

In February 2021, the Postal Service awarded a contract to Oshkosh to produce 50,000 to 165,000 Next Generation Delivery Vehicles (NGDV) and placed an order funding the production design, assembly tooling, and factory start-up costs. The Postal Service committed more than \$480 million before completing environmental review. After making this commitment, the Postal Service began its environmental review, issuing a final environmental impact statement (Final EIS) in December 2021.<sup>19</sup> The Draft SEIS is intended to supplement this prior review.

The Final EIS received criticism from many sectors across the federal government, the States, environmental and health non-governmental organizations, and labor union stakeholders. Before the Postal Service issued its record of decision, the U.S. Environmental Protection Agency (EPA), Council on Environmental Quality, members of Congress, and citizens groups wrote letters to the Postal Service identifying serious flaws with its NEPA process.

In particular, EPA’s letter identified numerous substantive flaws in the Final EIS and requested that the Postal Service address them in a supplemental EIS. EPA stated that (1) critical features of the Postal Service’s contract with Oshkosh were not disclosed; (2) the Postal Service underestimated greenhouse gas emissions from internal combustion engine vehicles and overestimated those from battery electric vehicles; (3) the Postal Service did not disclose data and other essential information underlying total cost of ownership analysis that drove the Postal Service’s decision-making; (4) the Postal Service failed to consider a single feasible alternative to the Proposed Action—particularly alternatives that are more environmentally protective; and (5) the Postal Service inadequately considered impacts on environmental justice communities.

The Postal Service nonetheless issued its record of decision (ROD) on February 23, 2022. The record of decision rejected EPA’s call for supplemental analysis, but it did not adequately address the numerous flaws identified by EPA and others.

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<sup>18</sup> *Id.* § 775.2(c), (e), (f).

<sup>19</sup> *See* 87 Fed. Reg. 994 (Jan. 7, 2022).

The Postal Service’s Office of Inspector General issued a report on March 21, 2022, entitled “Electric Delivery Vehicles and the Postal Service.”<sup>20</sup> The report found that electric vehicles are capable of meeting most of the Postal Service’s needs, particularly on longer routes. The Inspector General projected that electric vehicles are likely to be more affordable to own than gasoline-powered vehicles in certain cases, even in the absence of any financial incentives. Just before issuing the report, the Inspector General received a congressional request to review the Postal Service’s compliance with NEPA with respect to the vehicle acquisition program.

On April 5, 2022, the House Committee on Oversight and Reform held a hearing on the Postal Service’s delivery fleet, where it heard testimony from representatives from the Postal Service, its Inspector General, and other stakeholders. The next day, the President signed the Postal Service Reform Act of 2022. This significant overhaul of the Postal Service’s financial requirements for funding pension and medical benefits is projected to save the Postal Service billions of dollars over the coming decade.<sup>21</sup>

#### B. Litigation by States, Citizen Organizations and Unions

On April 28, 2022, the States and others filed suit in the United States District Court for the Northern District of California challenging the Postal Service’s defective environmental review.<sup>22</sup> The States’ complaint alleged that the Postal Service violated NEPA by (1) making “an irreversible and irretrievable commitment of resources” before completing the NEPA process by signing contracts with Oshkosh to procure vehicles six months before even releasing its draft environmental review, and a year prior to issuing the final environmental impact statement and record of decision; (2) failing to consider and evaluate reasonable alternatives to its action that would largely continue the status quo by replacing 90 percent of its fleet with fossil fuel-powered, internal combustion engine vehicles, evaluating only 10 percent electric and 100 percent electric vehicle options, while arbitrarily rejecting any consideration of vehicle fleets with a larger mix of electric vehicles; (3) failing to take a “hard look” at these alternatives, including air quality, environmental justice, and climate harms, by simply assuming that any upgrade to its vehicle fleet would have positive impacts on the environment; (4) failing to ensure the scientific integrity of its analysis by relying on unfounded assumptions regarding the costs and performance of electric

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<sup>20</sup> See U.S. Postal Service, Office of Inspector General, *Electric Delivery Vehicles and the Postal Service*, Report No. RISC-WP-22-003 (Mar. 17, 2022) [hereinafter, *IG Delivery Vehicles Report*], available at <https://www.uspsoig.gov/document/electric-delivery-vehicles-and-postal-service>.

<sup>21</sup> See Congressional Budget Office, *Estimated Budgetary Effects of Rules Committee Print 117-32 for H.R. 3076, the Postal Service Reform Act of 2022, as Posted on February 3, 2022, and as Amended by Amendment #1, the Manager's Amendment, as Posted on February 4, 2022* (Feb. 4, 2022) [hereinafter *CBO Report*], available at [https://www.cbo.gov/system/files/2022-02/hr3076\\_rules.pdf](https://www.cbo.gov/system/files/2022-02/hr3076_rules.pdf).

<sup>22</sup> See *California v. U.S. Postal Serv.*, Civil Case No. 3:22-cv-02583-JD (N.D. Cal.).

vehicles, infrastructure, and gas prices, and refusing to identify the source of the data relied upon in the final environmental impact statement; and (5) failing to consider inconsistencies of its preferred alternative with the States' laws and policies to reduce fossil fuel consumption and to electrify the transportation sector.

This litigation was related to a similar action brought by a coalition of non-governmental organizations,<sup>23</sup> and these claims remain pending. Another coalition of organizations and unions filed suit in federal district court in New York.<sup>24</sup>

### C. Legislative Developments

In early August 2022, Congress passed the Inflation Reduction Act. Section 70002 contains approximately \$3 billion in funding for the Postal Service zero-emissions delivery vehicles and associated infrastructure. This legislation closed the purported gap in funding that the Postal Service identified in the Final EIS and record of decision between the cost of gas-powered replacement vehicles and an electric vehicle fleet.

### D. Supplemental EIS Scoping Process

In the summer of 2022, the Postal Service announced that it would prepare a supplement to the Final EIS to examine acquiring (1) only up to 50,000 NGDV, 50 percent of which would be electric, and (2) up to 34,500 commercial vehicles, approximately 14,500 of which would be gas-powered.

The States filed scoping comments on August 15, 2022,<sup>25</sup> stating that (1) the Postal Service should pause its Oshkosh contract while supplemental review is completed, (2) the SEIS should assess a reasonable range of alternatives, including 80 percent and 95 percent electric alternatives, (3) the SEIS should account for significant increases in fuel costs in assessing the total cost of ownership, (4) the SEIS should include updated information on electric vehicle performance and infrastructure, (5) the SEIS must account for inconsistencies with approved state and local laws, policies and plans, (6) the SEIS should account for significant new information such as the Postal Service Reform Act of 2022 and the Inflation Reduction Act, the litigation over the final environmental impact statement and record of decision, and the Inspector General's March 2022 report and then-pending reports (subsequently issued in April 2023), and (7) the Postal Service should commit

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<sup>23</sup> *CleanAirNow v. DeJoy*, Case No. 3:22-cv-02576-JD (N.D. Cal. filed Apr. 28, 2022).

<sup>24</sup> *NRDC v. DeJoy*, Case No. 1:22-cv-03442-AT (S.D.N.Y. filed Apr. 28, 2022).

<sup>25</sup> Comments of the Attorneys General of New York, California, Colorado, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Michigan, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Corporation Counsel of the City of New York, and the District Counsel of the Bay Area Air Quality Management District (Aug. 15, 2022) [hereinafter AG Scoping Comments].

to 90 percent or more electric vehicles in its initial 5,000-vehicle order slated for production in 2023.

The States filed a supplemental scoping comment letter on February 2, 2023, urging the Postal Service to follow newly released guidance from the White House Council on Environmental Quality on assessing greenhouse gas emissions and climate change impacts in NEPA reviews.

#### E. Recent Announcements and April 2023 Inspector General Report

In December 2022, before releasing any supplemental NEPA analysis, the Postal Service announced it expected to acquire at least 66,000 electric vehicles as part of a 106,000-vehicle acquisition plan between 2022 and 2028.<sup>26</sup> The announcement further stated that acquisitions in 2026 and after were expected to be 100 percent electric. Two months later, the Postal Service awarded new contracts to purchase 9,250 commercial gas-powered vehicles, 9,250 commercial electric vehicles, and 14,000 electric vehicle charging stations.<sup>27</sup>

In April 2023, the Postal Service Office of Inspector General completed its report<sup>28</sup> examining compliance with NEPA in reviewing the delivery vehicles acquisition program. The report recommended that the supplement include an evaluation of more alternatives, update the total cost of ownership analysis, and update the assumptions underlying the environmental analysis to more fully reflect NGDV emissions.

#### F. The SEIS

The Postal Service issued the Draft SEIS in June 2023. It analyzes the environmental impacts of three scenarios for replacement of the Postal Service's delivery vehicles with approximately 106,480 vehicles over the next decade.

Under Alternative 1 (the Preferred Alternative), the Postal Service would purchase 106,480 vehicles in a mixed fleet of custom-built NGDVs from Oshkosh (75

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<sup>26</sup> U.S. Postal Service, Press Release, "USPS Intends To Deploy Over 66,000 Electric Vehicles by 2028, Making One of the Largest Electric Vehicle Fleets in the Nation" (Dec. 20, 2022), available at <https://about.usps.com/newsroom/national-releases/2022/1220-usps-intends-to-deploy-over-66000-electric-vehicles-by-2028.htm> .

<sup>27</sup> U.S. Postal Service, Press Release, "USPS Moves Forward with Awards to Modernize and Electrify the Nation's Largest Federal Fleet" (Feb. 28, 2023), available at <https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-to-modernize-and-electrify-nations-largest-federal-fleet.htm> .

<sup>28</sup> See U.S. Postal Service, Office of Inspector General, Next Generation Delivery Vehicles – Env'tl. Impact Statement, Audit Report, Report No. 22-107-R23 (Apr. 6, 2023) [hereinafter Audit Report], available at <https://www.uspsoig.gov/reports/audit-reports/next-generation-delivery-vehicles-environmental-impact-statement> .

percent electric) and other commercially available vehicles, about 20,000 of which would be gas-powered. Overall, Alternative 1 would be 62 percent electric and would occur over six years.

Under Alternative 2, the Postal Service would purchase 106,480 vehicles over eight years. They would all be custom-built NGDV, and 62 percent would be electric.

The “No-Action” Alternative consists of the program selected in the Final EIS and record of decision: up to 165,000 vehicles purchased over ten years (including a subset of 106,480 purchased over eight years), with only a 10 percent electric commitment.

#### G. The States’ Strong Interest in NEPA Review of the Postal Service’s Action

The States have a strong interest in preventing the adverse environmental and public health impacts of fossil fuel development and combustion, including air quality degradation and public health harms associated with the use of fossil fuel-powered vehicles. The transportation sector accounts for a significant percentage of emissions of both criteria pollutants and greenhouse gases, and Postal Service facilities are often located within environmental justice communities who are exposed to disproportionate emissions from mail delivery vehicles.<sup>29</sup>

The States also have a strong interest in preventing and mitigating harms that climate change poses to human health and the environment, including increased heat-related deaths, damaged coastal areas, increased wildfire risk, disrupted ecosystems, more severe weather events, and longer and more frequent droughts.<sup>30</sup> The States have long been leaders in adopting laws and plans to reduce greenhouse gas emissions and slow the pace of climate change, including policies to promote electrification of the transportation sector. As a result, the States have strong interests in preventing adverse impacts to these state and local laws and policies—including adopted policies, targets, statutes, and regulations aimed at reducing greenhouse gas emissions and associated climate harms.

Finally, the States have a strong interest in the Postal Service’s compliance with NEPA to provide timely and accurate information so commenters and residents can participate in public decision-making processes.

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<sup>29</sup> See First Amended Complaint, *California v. U.S. Postal Serv.*, Civil Case No. 3:22-cv-02583-JD, Doc. 79, ¶¶ 30-33 (N.D. Cal. filed Apr. 28, 2022).

<sup>30</sup> See *Massachusetts v. EPA*, 549 U.S. 497, 521 (2007).



## Comments on the Draft SEIS

The States provide the following comments on the Draft SEIS:

- 1. The Postal Service should pause its unlawful contract with Oshkosh and make no further vehicle orders until it completes this supplemental NEPA review.**

The Postal Service must complete its environmental review, including the SEIS and a revised record of decision, as appropriate, before committing resources to a particular course of action,<sup>31</sup> such as advancing work under a contract.<sup>32</sup> Otherwise, the Postal Service will prejudice its analysis of alternatives and commit resources before reviewing impacts of that commitment. NEPA’s “disclosure requirement[s] obligate the agency to make available to the public high quality information, including accurate scientific analysis, expert agency comments and public scrutiny, before decisions are made and actions are taken.”<sup>33</sup>

However, the Postal Service already executed an agreement with Oshkosh, and more recently, contracted for commercial electric vehicles, before completing this supplemental NEPA review. The Postal Service already committed \$480 million of public resources to Oshkosh before its initial, insufficient NEPA review was finalized. Then, after issuing the Final EIS and record of decision, the Postal Service placed an order for Oshkosh to produce up to 50,000 vehicles beginning in August 2023. Even after announcing a supplemental environmental process and accepting scoping comments—and in the midst of multiple lawsuits challenging its initial NEPA review—the Postal Service announced new plans to acquire approximately 62 percent electric vehicles and 38 percent gas-powered vehicles. Two months later, the Postal Service executed contracts for vehicles and charging stations.

In short, the Postal Service continues to commit resources before completing NEPA review, despite having only a defective and insufficient initial process, and now just the draft of this SEIS. NEPA prohibits an agency from committing resources to a particular course of action prior to completing its environmental review.<sup>34</sup> The Postal Service should use the supplemental review process to actually comply with NEPA, not repeat its prior mistakes.

To avoid additional NEPA violations and ensure the SEIS fully informs the Postal Service’s major purchasing decisions, the Postal Service should pause its Oshkosh contract, including its current 50,000-vehicle order, and its other more

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<sup>31</sup> See 40 C.F.R. § 1502.2(f) (“Agencies shall not commit resources prejudicing selection of alternatives before making a final decision”), see also *id.* § 1506.1 (headed “Limitations on actions during NEPA process”).

<sup>32</sup> *Metcalfe v. Daley*, 214 F.3d at 1143.

<sup>33</sup> *Ctr. for Bio. Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1167 (9th Cir. 2003).

<sup>34</sup> See 40 C.F.R. §§ 1502.2(f); 1506.1.

recent orders and contracts for commercial vehicles and charging stations, until completing the SEIS and issuing a revised record of decision. In addition, the Postal Service should make no more premature, unlawful commitments of resources and enter into no more contracts for vehicles and infrastructure until the supplemental process is completed. These pauses are critical because the Draft SEIS has identified new information but examined only an inadequate range of alternatives. The Postal Service must address numerous issues, detailed below.

## **2. The SEIS should be expanded to assess a reasonable range of alternatives for the entire vehicle acquisition program.**

As stated above in Section F, the Draft SEIS analyzes only two action alternatives and a No-Action Alternative for the replacement of 106,480 Postal Service vehicles. Alternative 1 consists of a mixed fleet of NGDV and commercial vehicles, with a 62 percent battery electric vehicle commitment, to be delivered within six years. Alternative 2 commits to the same proportion of electric vehicles, and consists of NGDV only, with 62 percent battery electric vehicles, to be delivered within eight years. The No-Action Alternative maintains the Postal Service’s decision from the 2022 NGDV Record of Decision, which consisted of the purchase of 50,000 to 165,000 NGDV over ten years, with a minimum of 10 percent battery electric vehicles.<sup>35</sup> The Draft SEIS does not consider any alternative with a vehicle mix containing more than 62 percent battery electric vehicles. Nor does it provide any explanation for the Postal Service’s failure to consider other alternatives.

Under NEPA, the Postal Service must provide a “detailed statement” regarding the “alternatives to the proposed action.”<sup>36</sup> The requirement to consider reasonable alternatives “lies at the heart of any NEPA analysis.”<sup>37</sup> All reasonable alternatives “must be rigorously explored and objectively evaluated.”<sup>38</sup> Moreover, as stated above, the failure to examine a viable alternative renders an environmental impact statement inadequate.<sup>39</sup>

In scoping comments for the Draft SEIS, the States requested that the Postal Service consider at least two additional alternatives—one consisting of at least 80 percent battery electric vehicles, and the other consisting of at least 95 percent

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<sup>35</sup> Draft SEIS, at iii.

<sup>36</sup> 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.14(a); 39 C.F.R. § 775.11(c)(5); *see also* 39 C.F.R. §§ 775.8(a)(4), 775.11(b)(2)(iv)-(v).

<sup>37</sup> *California ex rel. Lockyer v. U.S. Dept. of Agric.*, 459 F.Supp.2d 874, 905 (N.D. Cal. 2006); 40 C.F.R. § 1502.14.

<sup>38</sup> Council on Environmental Quality, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” Question 1a., 46 Fed. Reg. 18026, 18027 (1981).

<sup>39</sup> *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 814 (9th Cir. 1999) (agency failed to consider an adequate range of alternatives when it considered only a no action alternative along with two virtually identical action alternatives).

battery electric vehicles—for the entire vehicle acquisition program. The Draft SEIS, however, does not evaluate these proposed alternatives, and fails to explain why these alternatives are not viable. Instead, the Draft SEIS limits the alternatives considered to include a commitment only up to a maximum of 62 percent battery electric vehicles—a commitment that the Postal Service had already made months prior in its December 2022 announcement. The limited consideration of vehicle mix in the Draft SEIS represents a failure to evaluate a reasonable range of alternatives. In fact, in addition to ignoring the States’ proposal to consider 80 percent and 95 percent battery electric alternatives, the Postal Service has provided no explanation why *any* percentage of battery electric vehicles greater than 62 percent is not feasible.<sup>40</sup> This is especially noteworthy because the Draft SEIS discloses that fewer than 10 percent of routes are longer than 70 miles, the range that the Postal Service currently uses as the limit for battery electric vehicles.<sup>41</sup> Based on this calculation, it should be feasible for at least 90 percent of the Postal Service’s fleet to consist of battery electric vehicles.

In our scoping comments, we also urged the Postal Service to address recent legislative developments and their impact on the funding available for alternatives that would include a greater proportion of electric vehicles. In the record of decision, the Postal Service’s selection of an only 10 percent battery electric vehicle alternative was based largely on the purported higher costs and alleged lack of funding for electric vehicles, identifying an approximately \$2.3 billion need to achieve full electrification.<sup>42</sup> The SEIS should address the Postal Service’s significantly changed financial situation due to the \$3 billion in funding for electric vehicles and infrastructure provided by the Inflation Reduction Act of 2022 (HR 5376). The SEIS should assess the impact of this additional available funding on the Postal Service’s ability to acquire more battery electric vehicles overall, and to do so more quickly.

The Draft SEIS, however, contains only a brief discussion of financial considerations without disclosing details on how available funding is to be allocated under each of the alternatives. The Draft SEIS states that its Preferred Alternative “fully leverages the recently appropriated Inflation Reduction Act funding for zero-emission vehicles and supporting infrastructure,”<sup>43</sup> but does not explain why “most of the electric vehicle funding would continue to come from Postal Service revenues,” or why funding limitations would cap the electric vehicle commitment at 62 percent.<sup>44</sup> The Postal Service should disclose the available funding, and the amounts allocated

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<sup>40</sup> Cf. *State of California v. Block*, 690 F.2d 753, 768 (9th Cir. 1982) (nothing in the agency’s decisional criteria required not considering an alternative that allocates more than 33 percent of lands to the wilderness category).

<sup>41</sup> Draft EIS, at 3-2. In the Final EIS, the Postal Service stated that only 5 percent of its routes would be unsuited to battery electric vehicles.

<sup>42</sup> See ROD, at 5.

<sup>43</sup> Draft SEIS, at ii.

<sup>44</sup> Draft SEIS, at 3-2.

under each alternative—including 80 percent and 95 percent battery electric vehicle alternatives—to gas-powered vehicles, battery electric vehicles, and electric vehicle infrastructure. Additionally, as discussed below, the Postal Service should disclose the total cost of ownership of battery electric and gas-powered vehicles.

In sum, the Draft SEIS is inadequate because of its failure to consider viable alternatives that would include more than 62 percent electric vehicles.

### **3. The SEIS comparison of alternatives should include cost comparisons for total cost of ownership, not just acquisition.**

The Draft SEIS fails to consider the total cost of ownership of battery electric versus gas-powered vehicles by limiting its discussion of costs only to upfront acquisition costs. This is a departure from the Final EIS, which did consider a total cost of ownership analysis. The Draft SEIS does not clearly explain why it now declines to consider total cost of ownership: it briefly states that it changed its analysis to consider only upfront acquisition costs because of the Postal Service’s improving financial condition and the provision of \$3 billion from the Inflation Reduction Act. But the fact that significantly more funds are now available to the Postal Service should not change the cost comparison methodology.

Notably, the Postal Service’s consideration only of acquisition costs likely has the effect of skewing the analysis in favor of gas-powered vehicles because of the higher upfront costs of battery electric vehicles.<sup>45</sup> In fact, electrifying the Postal Service’s fleet would yield a net savings when the total cost of ownership is considered.<sup>46</sup> When considering the total cost of ownership, the Postal Service should take into account that, after the initial acquisition, due to lower fuel costs, electric vehicles can cost at least 13 percent less to operate as gas-powered vehicles.<sup>47</sup> Additionally, electric vehicles have lower maintenance costs because they have fewer moving parts, less abrasive braking options, and no need to change transmissions or other mechanical components.<sup>48</sup> All of these cost considerations make the ownership of electric vehicles more cost-effective than the Draft SEIS recognizes.

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<sup>45</sup> See *id.*

<sup>46</sup> See James Di Filippo, Nick Nigro, and Charles Satterfield, *Federal Fleet Electrification Assessment: A total cost of ownership analysis of federal fleet light vehicles and buses in 2025 and 2030*, Atlas Public Policy (August 2021), available at: [https://atlaspolicy.com/wp-content/uploads/2021/09/Federal\\_Fleet\\_Electrification\\_Assessment.pdf](https://atlaspolicy.com/wp-content/uploads/2021/09/Federal_Fleet_Electrification_Assessment.pdf).

<sup>47</sup> Lawrence Berkeley National Laboratory, *Why Regional and Long Haul Trucks Are Primed for Electrification Now*, 2022, available at: [https://eta-publications.lbl.gov/sites/default/files/updated\\_5\\_final\\_ehdv\\_report\\_033121.pdf](https://eta-publications.lbl.gov/sites/default/files/updated_5_final_ehdv_report_033121.pdf).

<sup>48</sup> North American Council for Freight Efficiency, *Electric Trucks Have Arrived: The Use Case for Vans and Step Vans*, 2022, available at: <https://nacfe.org/wp-content/uploads/edd/2022/04/Vans-and-Step-Vans-Report-FINAL.pdf>.

Under NEPA, the Postal Service must discuss each alternative considered “in detail, including the proposed action, so that reviewers may evaluate their comparative merits.”<sup>49</sup> By considering and disclosing only the acquisition costs of electric versus gas-powered vehicles, the Postal Service fails to conduct a full analysis of the comparative merits of the vehicles, and thus shortcuts the required balancing of environmental values with economic and technical considerations.<sup>50</sup> The Postal Service’s Final SEIS thus should include a total cost of ownership analysis.

#### **4. The SEIS should include updated information on battery electric vehicle performance and infrastructure.**

The Draft SEIS anticipates that changes in the Postal Service’s operations and improved financial condition will support the acquisition of more battery electric vehicles.<sup>51</sup> NEPA requires accurate and current information, which the agency must disclose to the public. “[A]n agency may not rely on incorrect assumptions or data.”<sup>52</sup> The Postal Service’s analysis must take the “hard look” required by NEPA, by using current information on battery electric vehicles performance and infrastructure.

The Final EIS used older battery performance and cost data, but in this rapidly evolving area, current data are critical to making informed decisions. However, the Postal Service is still relying on a 70-miles-per-charge threshold to determine the suitability of different routes for electric vehicle service. The Draft SEIS bases this route length primarily on the Postal Service’s vehicle testing, which appears to have been conducted sometime prior to issuance of the Final EIS more than 18 months ago. The Draft SEIS acknowledges that “[electric vehicle] range requirements will change over time as battery technology improves,”<sup>53</sup> but the Postal Service has not described any further testing of this range assumption.

As the States pointed out in scoping comments,<sup>54</sup> detailed information from the California Air Resources Board (CARB) provided cost data for comparable battery electric vehicles procured through state contracts in California at prices significantly lower than the figures the Postal Service used in its Final EIS.<sup>55</sup> The Draft SEIS does not appear to consider these other sources, nor update the mileage range offered by current battery technology, the costs of charging infrastructure, and the ratio and

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<sup>49</sup> 40 C.F.R. § 1502.14(b).

<sup>50</sup> See 42 U.S.C. § 4332(B).

<sup>51</sup> Draft SEIS, at 3-2 to 3-3.

<sup>52</sup> *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005).

<sup>53</sup> Draft SEIS, at 3-2.

<sup>54</sup> AG Scoping Comments, at 7.

<sup>55</sup> *Id.* citing Cal. Air Resources Board, Letter to Jennifer Beiro-Reveille, U.S. Postal Serv., at 17-20 (Jul. 29, 2022).

number of chargers necessary to support a fleet at higher percentages of electrification.

Similarly, the Draft SEIS does not examine the ranges for battery electric vehicles used by other delivery companies such as FedEx and Amazon, which have both committed to significantly electrifying their delivery vehicle fleets. Comparisons to other delivery companies should examine both NGDVs and the commercially available vehicles proposed for purchase.

## **5. The Supplemental EIS must account for inconsistencies with approved state and local laws, policies, and plans.**

The Postal Service's delivery fleet is the largest civilian public vehicle fleet in the country, with vehicles in every state and locality across the nation.<sup>56</sup> The NGDV Acquisitions program will therefore impact every state and local government's greenhouse gas requirements and initiatives, many of which have mandates or targets aimed at electrifying the transportation sector. NEPA regulations require that "[t]o better integrate environmental impact statements into State, Tribal, or local planning processes," an EIS "shall discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law[,] and [w]here an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."<sup>57</sup>

Certain locations will be particularly impacted, with the Postal Service identifying 414 "Candidate Sites" with an average of 100 vehicles. Of these, approximately 50 sites will have more than 200 vehicles.<sup>58</sup> However, neither the Final EIS nor the Draft SEIS addresses any state and local climate laws, regulations, policies or plans. The Draft SEIS specifically states that "[greenhouse gases] were analyzed on a national level . . . State regulations were not considered."<sup>59</sup> This significant omission violates NEPA and could impact States' efforts to address climate change.

In our scoping comments, the States identified adopted laws, regulations, policies, and plans that aim to reduce greenhouse gas emissions and fossil fuel consumption to mitigate the devastating consequences of global climate change. Many of these adopted measures are specifically designed to electrify the transportation sector. For example, California's laws and plans include: (1) California's statutory target of reducing greenhouse gas emissions by 40 percent below 1990 levels by 2030;<sup>60</sup> (2) the California Air Resources Board's plan to reduce fossil fuel consumption by 45 percent by 2030 to meet this target; (3) California's

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<sup>56</sup> Draft SEIS, at 4-20.

<sup>57</sup> 40 C.F.R. § 1506.2(d).

<sup>58</sup> Draft SEIS, at 4-40.

<sup>59</sup> Draft SEIS, at 4-20.

<sup>60</sup> Cal. Health & Safety Code § 38566.

policies to phase out the sale of new conventional passenger cars and trucks by 2035 and achieve a 100 percent zero-emission in-use medium and heavy duty vehicle fleet by 2045;<sup>61</sup> (4) California's policy to achieve carbon neutrality by 2045;<sup>62</sup> and (5) the Advanced Clean Fleets regulation, as adopted by the California Air Resources Board, which will require that federal delivery fleets transition to 25% zero emissions vehicles by 2028, and 100% zero emissions vehicles by 2036.<sup>63</sup> Local plans often work with state-level ones to achieve these ambitious targets, such as the Bay Area Air Quality Management District's target that 90 percent of vehicles in the Bay Area should be zero emissions by 2050, with an interim target of 1.5 million such vehicles by 2030.

Other examples provided in our scoping comments, but which were not considered in the Draft SEIS include:

- i. New York's Climate Leadership and Community Protection Act, which requires the state to reduce economy-wide greenhouse gas emissions 40 percent below 1990 levels by 2030 and at least 85 percent below 1990 levels by 2050.<sup>64</sup> The City of New York also has committed to reducing greenhouse gas emissions 80 percent below 2005 levels by 2050,<sup>65</sup> with numerous plans describing its path to achieving this goal, all of which call for increased electrification of the transportation sector.
- ii. Connecticut must reduce the level of greenhouse gas emissions in the state by at least 45 percent below the 2001 level by 2030 and by at least 80 percent below the 2001 level by 2050.<sup>66</sup>
- iii. Washington must reduce overall greenhouse gas emissions in the state by 45 percent below 1990 levels by 2030<sup>67</sup> and set a statewide target that all publicly and privately owned passenger and light duty vehicles of model year 2030 or later that are sold, purchased, or registered in Washington State be electric vehicles.<sup>68</sup>
- iv. New Mexico has enacted an Energy Transition Act, which sets standards for electric utilities of 50 percent renewable energy by 2030, 80 percent by 2040, and zero-carbon resources by 2050.

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<sup>61</sup> Cal. Executive Order N-79-20.

<sup>62</sup> Cal. Executive Order B-55-18.

<sup>63</sup> Available at:

<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/acf22/acffroa2.pdf> .

<sup>64</sup> See N.Y. Env'tl. Conserv. L. § 75-0107(1).

<sup>65</sup> See NYC Admin. Code § 24-803.

<sup>66</sup> Conn. Gen. Stat. § 22a-200a(a).

<sup>67</sup> Wash. Rev. Code § 70A.45.020(1)(a)(ii).

<sup>68</sup> S.B. 5974, 67th Leg., Reg. Sess. (Wash. 2022).

- v. Pennsylvania has adopted a Climate Action Plan to comply with the governor's commitment to reach a 26 percent reduction in greenhouse gases by 2025 and an 80 percent reduction by 2050.<sup>69</sup>
- vi. New Jersey's Global Warming Response Act requires the state to reduce greenhouse gas emissions from their 2006 levels by 80 percent by 2050.<sup>70</sup>
- vii. Oregon has established a policy to reduce greenhouse gas emissions by 45 percent below 1990 levels by the year 2035, and 80 percent below by 2050, and has enacted a requirement that the state's electric utilities transition to 100 percent renewable energy by 2040.<sup>71</sup>
- viii. Rhode Island's 2021 Act on Climate, *inter alia*, mandates greenhouse gas emission reductions to 45 percent below 1990 levels by 2030; 80 percent below 1990 levels by 2040, and to net-zero emissions by 2050.<sup>72</sup> As of 2026, there will be a statutory right to bring actions, including actions against the State and its agencies, for failure to comply with the 2021 Act on Climate.<sup>73</sup>
- ix. Maryland's Climate Solutions Act of 2022 requires the State to reduce greenhouse gas emissions 60 percent below 2006 levels by 2031.<sup>74</sup>

The Draft SEIS takes no account of these approved state and local plans and laws. The SEIS should at least identify applicable state and local laws, and estimate numbers of its vehicles expected to operate in States with such laws, regulations, policies, and plans. In particular, many of these state and local plans have timing requirements—moving towards an increasingly electrified transportation sector by certain years. Although the Postal Service has sketched out a plan in Appendix C of the Draft SEIS for the years expected to complete its vehicle acquisitions, it should assess consistency of its alternatives with the timing of transportation sector electrification and overall greenhouse gas emissions reductions in affected state and local jurisdictions.

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<sup>69</sup> See Pa. Executive Order 2019-01, available at <https://www.oa.pa.gov/Policies/eo/Documents/2019-01.pdf> and <https://www.dep.pa.gov/Citizens/climate/Pages/PA-Climate-Action-Plan.aspx>

<sup>70</sup> N.J.S.A. 26:2C-37.

<sup>71</sup> Executive Order No. 20-04; Or. Rev. Stat. § 469A.410.

<sup>72</sup> See R.I. Gen Laws § 42-6.2-9.

<sup>73</sup> See *id.*

<sup>74</sup> Md. Code Ann., Env't § 2-1204.1.



**6. The SEIS should address the consistency of its proposed alternatives with the Postal Service Inspector General’s March 2022 and April 2023 reports.**

In March 2022, U.S. Representatives Carolyn Maloney, Gerald Connolly, Stephen Lynch, Brenda Lawrence, and Jared Huffman requested a review of the U.S. Postal Service’s Next Generation Delivery Vehicles – Environmental Impact Statement.<sup>75</sup> The Postal Service Office of the Inspector General reviewed the Final EIS and issued an Audit Report in April 2023 (Audit Report).<sup>76</sup> This Report noted areas of concerns with portions of the Postal Service’s Final EIS that should be addressed in the SEIS. These included (1) an evaluation of more alternatives that are technically and economically feasible and meet the need for the proposed action; (2) updates to the total cost of ownership (TCO) analysis; and (3) updates to the emissions-related assumptions used.

- A. The Postal Service did not evaluate sufficient technically and economically feasible alternatives as the Audit Report recommended because it did not evaluate alternatives with significant higher battery electric vehicle ratios.

The Audit Report identified the acquisition alternatives presented in the Final EIS as overly narrow.<sup>77</sup> The Audit Report recommends the SEIS include an evaluation of more alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.<sup>78</sup> While the Draft SEIS evaluated additional technically and economically feasible alternatives, the Draft SEIS should be expanded to assess a reasonable range of alternatives. *See Comment 2, above.*

- B. The Postal Service did not update the Total Cost of Ownership analysis as the Audit Report recommended.

In the Final EIS the Postal Service used a Total Cost of Ownership (TCO) model, incorporating purchase costs, maintenance costs, fuel costs and, if applicable, battery electric vehicle charging infrastructure costs, to evaluate proposals.<sup>79</sup> However, the TCO analysis in the Final EIS was deficient in several ways. It used a baseline nationwide gasoline price of \$2.19/ gallon from October 12, 2020, and electricity price of \$0.1089/kWh from July 2020 – data that was more than a year old

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<sup>75</sup> Letter from Representatives Carolyn Maloney, Gerald Connolly, Stephen Lynch, Brenda Lawrence, and Jared Huffman to Tammy L. Whitman, Postal Service Inspector General (Mar. 14, 2022), *available at*

[https://huffman.house.gov/imo/media/doc/usps\\_ig\\_letter\\_314.2022.pdf](https://huffman.house.gov/imo/media/doc/usps_ig_letter_314.2022.pdf)

<sup>76</sup> Audit Report.

<sup>77</sup> *Id.* at 6.

<sup>78</sup> *Id.* at 7.

<sup>79</sup> *See* Final EIS, at 1-3.

when the FEIS was completed.<sup>80</sup> After issuing the Final EIS, the Postal Service conducted a sensitivity analysis using updated baseline nationwide prices, but concluded that these results did not change the overall investment cost differentials.<sup>81</sup> Subsequently, the Office of the Inspector General applied its own TCO model to explore how different route characteristics and other scenarios could affect the cost of electric delivery vehicle implementation.<sup>82</sup> As a result, the Audit Report recommends the Postal Service make efforts to include more current, long-standing baseline data in order to provide a more robust analysis.<sup>83</sup>

The Audit Report also recommended that the TCO in the SEIS account for regional delivery operational variances such as daily vehicle mileage, air conditioning usage, and gas and electricity fuel prices.<sup>84</sup> As the Audit Report points out, using more precise data for each of these elements would provide a more rigorous assessment. The TCO model in the Final EIS assumed an average daily vehicle mileage of 17.3 miles.<sup>85</sup> Given the significant diversity in route distances, using actual route mileage would provide more accurate analysis.<sup>86</sup> For example, it is reasonable to expect battery electric vehicles on longer routes to generate more fuel savings as compared to an internal combustion engine vehicle. The TCO model in the Final EIS assumed a national average air conditioning use of 60 percent on and 40 percent off in its fuel efficiency calculations for internal combustion engine vehicles.<sup>87</sup> However, a more geographic based weighting system that took into account regional annual average temperatures would provide a more accurate fuel efficiency considering the expected differences in air conditioning usage in colder and warmer regions.<sup>88</sup> Finally, the TCO model used in the Final EIS relied on national averages for gasoline and electricity fuel prices.<sup>89</sup>

However, instead of updating the TCO analysis as the Audit Report recommended, the Postal Service shifted the basis for its analysis to focus on the upfront acquisition costs (including both vehicle purchase and site charging infrastructure).<sup>90</sup> The Draft SEIS notes this shift in approach is a result of the Postal Service's improving financial condition and the provision of \$3 billion from the Inflation Reduction Act to fund the purchase of zero-emission vehicles and the acquisition of necessary infrastructure at Postal Service facilities to support battery

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<sup>80</sup> Final EIS, at Appendix B-158.

<sup>81</sup> Audit Report, at 7.

<sup>82</sup> *Id.* at 8.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Final EIS, at Appendix B-158.

<sup>86</sup> Audit Report, at 8.

<sup>87</sup> *See Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Final EIS, at Appendix B-158.

<sup>90</sup> Draft SEIS, at 3-2.

electric vehicle adoption.<sup>91</sup> While these developments are encouraging, the shift between the Final EIS and the Draft SEIS in approach to analyzing relative costs of alternatives analyzed leaves a void on information. Simply evaluating the upfront acquisition costs undercounts significant differences between battery electric vehicles and internal combustion engine vehicles that should be evaluated. *See* Comment 3, above.

C. The Postal Service updated some emissions-related assumptions as the Audit Report recommended, but should update more.

The Audit Report identified various emissions-related assumptions in the Final EIS that should be updated, including:

- applying a single-county's emissions assumptions on a national scale;
- omitting starting and refueling emissions;
- using emissions profile that includes lower weight vehicles;
- failing to account for future emissions reductions and using outdated electricity generation mix;
- failing to appropriately model power sector emissions; and
- failing to include grid electrical losses.<sup>92</sup>

The Draft SEIS uses updated models to address some of the emissions-related assumptions highlighted by the Audit Report. For example, in order to capture emissions from starting and refueling, the Draft SEIS uses an updated Motor Vehicle Emissions Simulator (MOVES) model, which incorporates starting and refueling emissions for direct emissions.<sup>93</sup> Furthermore, to correct emissions-related assumptions related to upstream electricity generation, the Draft SEIS uses the Greenhouse Gases, Emissions, and Energy use in Technologies model (GREET2022).<sup>94</sup> By using GREET2022, the Draft SEIS better incorporates electricity generation emissions, upstream emissions of criteria pollutants, and grid electrical losses.

However, despite the Audit Report's recommendation to adjust the emissions analysis to include regional variation, it is unclear whether the Draft SEIS sufficiently addresses this recommendation. The Final EIS applied emissions assumptions for Westchester County, NY on a national scale.<sup>95</sup> Applying emissions assumptions of Westchester County nationwide does not account for regional variations in key emissions inputs, such as fuel formulation, drive cycles, and air

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<sup>91</sup> *Id.*

<sup>92</sup> Audit Report, at 9-11.

<sup>93</sup> Draft SEIS, at 4-17, Appendix F-4.

<sup>94</sup> *Id.* at 4-16, 4-18, Appendix F-24.

<sup>95</sup> Final EIS, at Appendix F-6, 18, Appendix B-188.

conditioning usage.<sup>96</sup> Despite the insufficiency of this one value across the board approach, but seemingly seeking to respond to this recommendation, the Postal Service performed a “national-scale analysis” for the Draft SEIS.<sup>97</sup> However, applying a national average to all scenarios does no more to account for regional variations than applying a single county’s emissions assumptions.

Finally, the Draft SEIS does not incorporate the Audit Report’s recommendation regarding the classification of the NGDVs as “light commercial truck.” This misclassification likely underestimates emissions from internal combustion engine NGDVs.<sup>98</sup> Although the regulatory class of “light duty vehicles” include vehicles weighing less than 10,000 pounds, as the NGDV are, the MOVES model further distinguishes light duty trucks by their federal emission control regulations.<sup>99</sup> Trucks with a gross vehicle weight rating less than 8,500 pounds are considered light duty, while trucks greater than 8,500 pounds are considered heavy duty. Even though the NGDV analyzed by the Postal Service weighed more than 8,500 pounds, the Draft SEIS classified them as “light commercial truck” in the MOVES model.<sup>100</sup> Given the gross vehicle weight ranges, the vehicles analyzed in the Draft SEIS should have been classified as “light-heavy duty” in the model. This more appropriate classification would have provided more accurate information to be analyzed.

## **7. The SEIS should address the Postal Service’s announcement that it will purchase 100 percent electric vehicles after 2026.**

The Postal Service’s December 2022 announcement of the current 62 percent electric mix also stated an expectation that vehicle purchases in 2026 and later would be 100 percent electric. However, the SEIS does not address this announcement or examine it in the context of various alternatives.<sup>101</sup> The SEIS should clarify the Postal Service’s commitments to its future purchasing plans.

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<sup>96</sup> Audit Report, at 9.

<sup>97</sup> Draft SEIS, at 4-16; Appendix F-4. Noting that this was recommended by EPA.

<sup>98</sup> *Id.* at Appendix F-4.

<sup>99</sup> See EPA, How Does MOVES Classify Light-Duty Trucks?

<https://www.epa.gov/moves/how-does-moves-classify-light-duty-trucks> .

<sup>100</sup> Long-Life Vehicles and Delivery Personally Owned Vehicles were classified as passenger trucks.

<sup>101</sup> See inconsistencies in Draft SEIS, at Appendices C-1 and C-2. Specifically, Table C-1 in Appendix C shows a hypothetical plan for Alternative 1 that is consistent with only electric vehicle purchases beginning in 2026, but Tables C-2 for Alternative 2 shows purchases of gas-powered vehicles through 2030.

**8. The SEIS’s Environmental Justice Analysis should be strengthened to fully examine the impacts of each alternative and the differences between alternatives.**

It is crucial for the Postal Service to strengthen its environmental justice analysis, especially considering that 349 of the 414 Candidate Sites for vehicle deployment are located in environmental justice communities.<sup>102</sup> First, the Environmental Justice Analysis in the Draft SEIS limits the impacts analysis to a one-mile buffer study area around “Candidate Sites.”<sup>103</sup> The Draft SEIS summarily dismisses impacts beyond the buffer area as “negligible” because such emissions are “distributed along an entire route.”<sup>104</sup> However, this conclusion ignores that the same impacts continue along the entire route, and many of these routes wind through the same or similar communities that are already heavily burdened by truck traffic-related impacts. Since this narrow geographic study area fails to properly examine the impacts of alternatives on environmental justice communities, the SEIS should evaluate the impacts of alternatives beyond the one-mile buffer study area.<sup>105</sup>

Second, the characterization of impacts on environmental justice communities as “negligible” fails to recognize the disproportionate air quality impacts that such communities already experience. It is well-established that residents of low-income neighborhoods and communities may already be more vulnerable to air pollution because of proximity to pollution sources such as factories, major roadways, and ports with diesel truck operations.<sup>106</sup> This can result in health effects such as asthma, reduced lung function, cardiovascular disease, and premature death. Children and the elderly are especially vulnerable to these health impacts.<sup>107</sup> Considering the disproportionate burden that environmental justice communities face, and the fact that any gas-powered vehicles deployed to these communities will be in use for decades, the Postal Service should evaluate the cumulative health impacts of its alternatives on these communities.

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<sup>102</sup> Draft SEIS, at Appendix D-4.

<sup>103</sup> Draft SEIS, at 4-39.

<sup>104</sup> Draft SEIS, at 4-41.

<sup>105</sup> The Draft SEIS also notes air quality effects on EJ communities nationwide beyond one mile of vehicle deployment sites are negligible. See Draft SEIS at 4-41.

<sup>106</sup> EPA, “EPA Research: Environmental Justice and Air Pollution,” available at: <https://www.epa.gov/ej-research/epa-research-environmental-justice-and-air-pollution> ; see also Jbaily, et al., *Air pollution exposure disparities across U.S. population and income groups*, 601 NATURE 228 (Jan. 2022), <https://doi.org/10.1038/s41586-021-04190-y> ; Union of Concerned Scientists, “Inequitable Exposure to Air Pollution from Vehicles in California,” (Feb. 2019), available at: <https://www.ucsusa.org/sites/default/files/attach/2019/02/cv-air-pollution-CA-web.pdf> .

<sup>107</sup> EPA, “EPA Research: Environmental Justice and Air Pollution,” available at: <https://www.epa.gov/ej-research/epa-research-environmental-justice-and-air-pollution> .

Third, the Draft SEIS fails to disclose the communities in which the Candidate Sites<sup>108</sup> are located, making it all but impossible to properly evaluate the information provided in the Draft SEIS. Further, the Draft SEIS does not fully disclose the criteria for selecting Candidate Sites.<sup>109</sup> This contravenes a fundamental objective of NEPA, which requires that relevant information be made available to the public so that it may also play a role in the decision-making process.<sup>110</sup> The SEIS should provide additional information about the Candidate Sites, site selection process, and characteristics of the surrounding communities.

Finally, the Draft SEIS's analysis of environmental justice impacts combines its assessment of Alternatives 1 and 2, only noting that "emissions reductions would occur sooner under Alternative 1" as a result of an increased rate of battery electric vehicle deployment.<sup>111</sup> Although the alternatives analyzed are somewhat similar, the SEIS should examine the specific differences in impacts on environmental justice communities between the two alternatives.<sup>112</sup> This becomes particularly important when an expanded range of reasonable alternatives are assessed. *See* Comment 2, above.

## Conclusion

The States appreciate the opportunity to comment on the Draft SEIS. We support more robust environmental analysis, but we have identified a number of areas to expand this NEPA review to address existing deficiencies in the Final EIS and record of decision and examine a full range of reasonable alternatives. Until the SEIS is complete and the shortcomings in the Final EIS and record of decision corrected, there should be no further actions for vehicle production under the existing NGDV contract or commercially available vehicle contracts that would lock in production of gas-powered vehicles. NEPA requires an agency to complete its analysis

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<sup>108</sup> Draft SEIS, at 4-38, fn 20 (stating the Candidate Sites are subject to change).

<sup>109</sup> Draft SEIS, at 3-4 (noting that Postal Service has not yet finalized which existing facilities would comprise the Candidate Sites, and stating only that Candidate Sites tend to be larger sites with numerous routes suitable for battery electric vehicles).

<sup>110</sup> *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989).

<sup>111</sup> Draft SEIS, at 4-41.

<sup>112</sup> Environmental justice is defined by EPA as the "fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to development, implementation, and enforcement of environmental laws, regulations and policies." EPA, EPA-300-B-1-6004, EJ 2020 Action Agenda: The U.S. EPA's Environmental Justice Strategic Plan for 2016-2020, at 1 (Oct. 2016). For the purpose of this comment, the term "environmental justice community" refers to a community of color or community experiencing high rates of poverty that due to past and or current unfair and inequitable treatment is overburdened by environmental pollution, and the accompanying harms and risks from exposure to that pollution, because of past or current unfair treatment.

*before* taking an action, and the Postal Service must comply with this fundamental environmental protection.

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