



Institute *for*
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

April 5, 2021

To: U.S. Postal Service

Subject: Consideration of Greenhouse Gas Emissions and Omission of All Zero-Emission Alternative in Upcoming Environmental Impact Statement for Purchase of Next Generation Delivery Vehicles (Document No. 2021-04457)

The Institute for Policy Integrity at New York University School of Law (“Policy Integrity”)¹ respectfully submits the following comments on the U.S. Postal Service’s above-referenced Notice of Intent.² Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity regularly submits comments to federal agencies on the consideration of greenhouse gases and impacts on climate change under the National Environmental Policy Act (“NEPA”).

In the Notice of Intent, the Postal Service announces that it will prepare an environmental impact statement for the purchase of 50,000–165,000 vehicles “consist[ing] of a mix of internal combustion engine and battery electric powertrains.”³ The Postal Service further explains that this assessment “will evaluate the environmental impacts of the purchase and operation of the [proposed vehicles], as well as a commercial off-the-shelf (COTS) vehicle alternative and a ‘no action’ alternative.”⁴ In these comments, we offer advice to the Postal Service on how it can incorporate climate impacts into its environmental review by using the social cost of greenhouse gases. We also urge the Postal Service to consider the alternative of an all zero-emission fleet.

The Postal Service Should Contextualize the Climate Impacts of Each Alternative Using the Social Cost of Greenhouse Gases

The Postal Service’s selection will inevitably have substantial impacts on the emissions of greenhouse gases and other pollutants, resulting in hundreds of thousands or potentially

¹ This document does not purport to represent the views, if any, of New York University School of Law.

² 86 Fed. Reg. 12,715 (Mar. 4, 2021).

³ *Id.*

⁴ *Id.* Several weeks ago, before completing the environmental review, the Postal Service awarded a service contract to complete this fleet overhaul. U.S. Postal Service, *U.S. Postal Service Awards Contract to Launch Multi-Billion-Dollar Modernization of Postal Delivery Vehicle Fleet* (Feb. 23, 2021), <https://about.usps.com/newsroom/national-releases/2021/0223-multi-billion-dollar-modernization-of-postal-delivery-vehicle-fleet.htm>.

millions of metric tons of carbon dioxide emissions ever year.⁵ The Postal Service should not only estimate the greenhouse gas emissions from each alternative, but also provide context to those emissions by using the social cost of greenhouse gases to assess their climate impacts.

As a federal appeals court has explained, the “impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires,” and it is arbitrary and capricious not to “provide the necessary contextual information about the[se] cumulative and incremental environmental impacts.”⁶ As a starting point for its climate analysis, the Postal Service must calculate the greenhouse gas emissions from each alternative. This calculation is relatively straightforward. To calculate direct tailpipe emissions, the agency simply needs to estimate the vehicle miles travelled from the fleet using available agency data, and then multiply that mileage by the fleet’s average tailpipe emissions per mile.⁷

But mere quantification of greenhouse gas emissions is not enough. To fulfill their obligation to take a “hard look” under NEPA, agencies must also assess the impact of a project’s emissions on climate change and resulting health and welfare harms such as mortality or property damages. The U.S. Supreme Court has called the disclosure of impacts the “key requirement of NEPA,” and held that agencies must “consider and disclose the *actual environmental effects*” of a proposed project in a way that “brings those effects to bear on [the agency’s] decisions.”⁸ The actual effects of greenhouse gas emissions are not those emissions themselves, but rather the incremental climate impacts caused by those emissions.⁹ For this reason, numerous federal courts have held that mere quantification of greenhouse gas emissions

⁵ On average, 165,000 passenger cars produce approximately 763,000 metric tons of carbon dioxide equivalence per year. EPA, Greenhouse Gas Equivalencies Calculator, <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>. But since trucks tend to emit more on a per-mile basis than passenger cars—and mail trucks are likely driven more miles than the average car as well—the greenhouse gas implications of this determination may be substantially larger.

⁶ *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008); *see also id.* (“[T]he fact that climate change is largely a global phenomenon that includes actions that are outside of [the agency’s] control . . . does not release the agency from the duty of assessing the effects of *its* actions on global warming within the context of other actions that also affect global warming.”); *Border Power Plant Working Grp. v. U.S. Dep’t of Energy*, 260 F. Supp. 2d 997, 1028–29 (S.D. Cal. 2003) (failure to disclose project’s indirect carbon dioxide emissions violates NEPA).

⁷ Average tailpipe emissions per mile are a direct function of a vehicle’s mileage per gallon. One gallon of gasoline releases 8,887 grams of carbon dioxide, while one gallon of diesel fuel releases 10,180 grams of carbon dioxide. EPA, *Greenhouse Gas Emissions from a Typical Passenger Vehicle*, <https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle>.

⁸ *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 96 (1983).

⁹ For a more complete discussion of actual climate effects, including air-quality mortality, extreme temperature mortality, lost labor productivity, harmful algal blooms, spread of West Nile virus, damage to roads and other infrastructure, effects on urban drainage, damage to coastal property, electricity demand and supply effects, water supply and quality effects, inland flooding, lost winter recreation, effects on agriculture and fish, lost ecosystem services from coral reefs, and wildfires, *see* EPA, *Multi-Model Framework for Quantitative Sectoral Impacts Analysis: A Technical Report for the Fourth National Climate Assessment* (2017); U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment* (2017); EPA, *Climate Change in the United States: Benefits of Global Action* (2015); Union of Concerned Scientists, *Underwater: Rising Seas, Chronic Floods, and the Implications for U.S. Coastal Real Estate* (2018).

and comparisons to geographic inventories is insufficient because this fails to capture the project's incremental climate impacts.¹⁰

An available and widely-used tool—the social cost of greenhouse gases—allows for the incremental assessment of climate impacts that NEPA requires. The social cost of greenhouse gases calculates how the emission of an additional unit of greenhouse gases affects atmospheric greenhouse concentrations, how that change in atmospheric concentrations affects temperature, and how that change in temperature incrementally contributes to the various economic damages resulting from climate change.¹¹ The social cost of greenhouse gases tool therefore captures the factors that actually affect public welfare and assesses the degree of impact to each factor, in ways that merely estimating the volume of emissions cannot. In fact, various agencies have used the social cost of greenhouse gases to assess a project's climate impacts under NEPA.¹²

Applying the social cost of greenhouse gases is straightforward and provides information that would be very useful to the Postal Service's assessment. The most widely used social cost estimates were developed by the federal Interagency Working Group on the Social Cost of Greenhouse Gases ("Working Group"), a coordinated effort among twelve federal agencies and White House offices. The National Academies of Sciences has issued two reports that broadly supported the use of the Working Group's estimates by federal agencies.¹³ Distinguished economists have explained that the Working Group's estimates are the best numbers available.¹⁴ And the U.S. Court of Appeals for the Seventh Circuit upheld agency reliance on these estimates.¹⁵

¹⁰ See, e.g., *Ctr. for Biological Diversity*, 538 F.3d at 1216–17 (rejecting analysis under NEPA when agency "quantifie[d] the expected amount of [carbon dioxide] emitted" but failed to "evaluate the incremental impact that these emissions will have on climate change or on the environment more generally," noting that this approach impermissibly failed to "discuss the *actual* environmental effects resulting from those emissions" or "provide the necessary contextual information about the cumulative and incremental environmental impacts" that NEPA requires); *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1190 (D. Colo. 2014) ("Beyond quantifying the amount of emissions relative to state and national emissions and giving general discussion to the impacts of global climate change, [the agencies] did not discuss the impacts caused by these emissions."); *Mont. Env'tl. Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1096–99 (D. Mont. 2017) (rejecting the argument that the agency "reasonably considered the impact of greenhouse gas emissions by quantifying the emissions which would be released if the [coal] mine expansion is approved, and comparing that amount to the net emissions of the United States").

¹¹ Interagency Working Group on the Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis* 5 (2010).

¹² See e.g., Bureau of Ocean Energy Mgmt., Final Environmental Impact Statement of Cook Inlet Planning Area Oil and Gas Lease Sale 244 (BOEM 2016-069) (Dec. 23, 2016); see also Peter Howard & Jason Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 COLUM. J. ENVTL. L. 203, 270–84 (2017) (listing all uses by federal agencies through mid-2016, including numerous NEPA assessments).

¹³ Nat'l Acads. Sci., Eng'g & Med., *Valuing Climate Damages: Updating Estimates of the Social Cost of Carbon Dioxide* (2017); Nat'l Acads. Sci., Eng'g & Med., *Assessment of Approaches to Updating the Social Cost of Carbon: Phase I Report on a Near-Term Update* (2016).

¹⁴ See, e.g., Richard L. Revesz et al., *Best Cost Estimate of Greenhouse Gases*, 357 Science 655 (2017) (co-authored with economists Michael Greenstone, Michael Hanemann, Peter Howard, and Thomas Sterner).

¹⁵ *Zero Zone, Inc. v. U.S. Dep't of Energy*, 832 F.3d 654, 678 (7th Cir. 2016).

The Working Group released estimates in 2010 and updated them in 2016 to “provide a consistent approach for agencies to quantify [climate change] damage in dollars.”¹⁶ This past February, the Working Group once again reaffirmed its previous numbers as reflecting “the best available science,” though the Working Group acknowledged that these valuations “likely underestimate societal damages from [greenhouse gas] emissions” and began a process to update these valuations by January 2022.¹⁷ And as the Working Group explained, agencies should apply the social cost metrics to any “relevant agency actions”—not just regulations.¹⁸ This advice echoed similar language in Executive Order 13,990, in which President Biden recognized that the social cost of greenhouse gases could be useful for a wide range of agency processes including “decision-making, budgeting, and procurement.”¹⁹ In that Executive Order, President Biden called on the Working Group to provide additional guidance by September 2021 on the decisions for which the executive branch should apply the social cost of greenhouse gases.²⁰

Accordingly, the Postal Service should apply the Working Group’s social cost of greenhouse gases valuations to assess the incremental climate impacts of each alternative.

The Postal Service Should Consider the Alternative of an All Zero-Emission Fleet

The Postal Service should also consider the alternative of an all zero-emission fleet.²¹ NEPA regulations currently require an agency to “[e]valuate reasonable alternatives to the proposed action.”²² As the Council on Environmental Quality explained last year in adopting this regulatory language, while an environmental impact statement “need not include every available alternative,” “NEPA’s policy goals are satisfied when an agency analyzes . . . a spectrum of alternatives [that] allows for the selection of any alternative within that spectrum.”²³ Here, however, the Postal Service omits a reasonable policy alternative—an all-zero emission fleet—that falls outside the “spectrum of alternatives” that the agency intends to consider. Continued

¹⁶ *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233, at P 45 (Mar. 14, 2018).

¹⁷ Interagency Working Group on the Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide – Interim Estimates under Executive Order 13,990 at 3–4 (2021).

¹⁸ *Id.* at 14.

¹⁹ Exec. Order No. 13,990 § 5(b), 86 Fed. Reg. 7037 (Jan. 25, 2021).

²⁰ *Id.*

²¹ The Postal Service states that the environmental impact statement “will evaluate the environmental impacts of the purchase and operation of the [proposed vehicles], as well as a commercial off-the-shelf (COTS) vehicle alternative and a ‘no action’ alternative.” 86 Fed. Reg. 12,715. Because the proposed fleet “consist[s] of a mix of internal combustion engine and battery electric powertrains,” the Postal Service does not contemplate an alternative consisting exclusively of zero-emission vehicles.

²² 40 C.F.R. § 1502.14(a).

²³ Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304, 43,330 (July 16, 2020). These regulations are currently being challenged in several federal lawsuits, and have been flagged by the Biden administration for reconsideration and possible repeal. Prior to this regulation taking effect, CEQ regulations required agencies to “objectively evaluate *all* reasonable alternatives” (emphasis added). Since the prior iteration of this regulation appears to be more stringent than the current version, rescission of the current version and restoration of the prior version would not affect the unlawfulness of the Postal Service’s failure to consider the alternative of an all zero-emission fleet.

omission of an all zero-emission fleet among the alternatives evaluated would therefore violate NEPA’s alternatives requirements.

Indeed, the consideration of an all zero-emission fleet is clearly a “reasonable alternative” that the Postal Service should consider. Electric vehicles already make up a significant share of the automobile market, accounting for 1.7 million vehicle sales in the year 2020.²⁴ Electric vehicle sales are projected to quintuple by 2025 (to 8.5 million vehicles) and increase by a factor of fifteen by 2030 (to 26 million vehicles)²⁵—both dates which lie within the ten-year procurement plan proposed here. Electric vehicles are also expected to cost the same or less than fossil-fuel vehicles later this decade.²⁶ And other mail carriers including FedEx and UPS are rapidly transitioning their fleets to zero-emission vehicles.²⁷

Because an all zero-emission fleet is commercially viable and would curtail the greenhouse gas pollution endemic to all other options, the Postal Service should assess this option alongside other alternatives. In doing so, the Postal Service should evaluate the climate benefits of this alternative using the social cost of greenhouse gases, and should select a different alternative only if it presents sufficiently offsetting benefits relative to the prospect of purchasing all zero-emission vehicles.

Sincerely,

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²⁴ BloombergNEF, Electric Vehicle Outlook 2020, <https://about.bnef.com/electric-vehicle-outlook/>.

²⁵ *Id.*

²⁶ Katie Fehrenbacher, *The race to mainstream electric vehicles by 2030*, GREENBIZ (Dec. 2, 2020), <https://www.greenbiz.com/article/race-mainstream-electric-vehicles-2030>.

²⁷ See Grace Dean, *FedEx Is Going All-Electric*, BUSINESS INSIDER (Mar. 3, 2021), <https://www.businessinsider.com/fedex-delivery-fleet-all-electric-carbon-neutral-2040-sustainability-2021-3>; UPS, Finding the Path to a Zero-Emissions Future, <https://www.ups.com/us/en/services/knowledge-center/article.page?kid=art16a2aa42a4f&articlesource=longitudes>.