



July 25, 2014

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Ms. Dana Hyland  
U.S. Environmental Protection Agency  
Office of Air and Radiation  
Climate Change Division  
1200 Pennsylvania Ave NW  
Mailcode 6207J  
Washington DC 20460

Re: Clarification of ITSSD FOIA Request EPA-HQ-2014-00826

Dear Ms. Hyland,

The Institute for Trade, Standards and Sustainable Development (ITSSD) is in receipt of your correspondence dated July 22, 2014, wherein you conclude that, “[y]our 145-page FOIA does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them.”

While ITSSD disagrees with EPA’s conclusion that its request “does not reasonably describe the records” sought, ITSSD nevertheless, without waiving any of its rights under FOIA, will respond to your latest request “to clarify the records” it is seeking.<sup>1</sup>

ITSSD agrees that the following paragraph excerpted from page 5 of ITSSD’s FOIA request EPA-HQ-2014-00826 adequately *summarizes, in general terms*, the overall scope of the records requested:

*This FOIA Request seeks disclosure of all “EPA climate science-related peer review files” [...] created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, substantiating the specific measures EPA had taken, consistent with the highest and most rigorous standards applicable to highly influential scientific assessments (“HISAs”) imposed by the Information Quality Act (“IQA”) and the Office of Management and Budget (“OMB”) and EPA IQA-implementing guidelines, to ensure the quality, integrity and reliability of all EPA- and third-party-developed and peer reviewed climate science-related assessments and reports upon which the Administrator primarily relied in reaching its 2009 positive Greenhouse Gas (“GHG”) Endangerment and Cause or Contribute Findings under Clean Air Act (“CAA”) Sec. 202(a)(1).*

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<sup>1</sup> For the record, it should be noted that ITSSD devoted the extra time and effort to prepare and submit its new FOIA request precisely because your office had wanted more clarification. ITSSD does not acknowledge your reference to the clarifications supplementing ITSSD’s prior FOIA request EPA-HQ-2014-004938. In an accommodation to EPA-OAR, ITSSD withdrew said FOIA request and clarifications, without prejudice, simultaneous with the June 30, 2014 filing of its new FOIA request EPA-HQ-2014-00826.

It should be noted, however, that 40 CFR 2.102(c) advises requesters as follows:

“The more specific you are about the records or type of records that you want, the more likely the EPA will be able to identify and locate records responsive to your request.”<sup>2</sup>

Consistent therewith, ITSSD’s new FOIA request EPA-HQ-2014-00826 identifies and describes in granular detail four categories of specific records (defined interchangeably as “EPA climate science peer review files” and “EPA Peer Review Records”) that fall within the scope of the above-quoted paragraph. Indeed, as discussed below, our 145-page request describing the records sought is *the* model of specificity.

On pages 6-7, ITSSD’s new FOIA request further clarifies that the above-quoted paragraph covers four specific categories of records:

- 1) “EPA Records Category #1: *Records focusing on EPA-developed and reviewed HISAs supporting EPA GHG Endangerment Findings*”;
- 2) “EPA Records Category #2: *Records focusing on third-parties’ review of third party-developed HISAs which the EPA Administrator had embraced, adopted and disseminated as its own, in support of EPA’s GHG Endangerment Findings*”;
- 3) “EPA Records Category #3: *Records focusing on an interagency panel’s review of the EPA-developed summary and synthesis of the combined twenty-eight HISAs designated as “core reference documents” supporting EPA’s GHG Endangerment Findings*”; and
- 4) “EPA Records Category #4: *Records focusing on EPA and third party administrative mechanisms employed to ensure that affected persons may seek and obtain correction or reconsideration of scientific information EPA and such third parties had disseminated in violation of OMB Guidelines*”.

To provide added clarity, ITSSD’s FOIA request, thereafter, further describes the specific records sought in each of these four records categories.

On pages 7-11, ITSSD’s FOIA request sets forth the following specific records for disclosure in EPA Records Category #1:

“EPA Records Category #1: *Records focusing on EPA-developed and reviewed HISAs supporting EPA GHG Endangerment Findings*”

This FOIA request seeks specific disclosure of:

All “**EPA climate science-related peer review files**” (as defined in Section III of this FOIA Request, and hereinafter referred to as “**EPA Peer Review Records**”) created,

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<sup>2</sup> See 40 CFR 2.102(c).

transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, **focused on substantive and procedural peer reviews conducted, managed or overseen by EPA, an EPA-established federal advisory committee(s), and/or an EPA-hired third-party contractor(s) (private parties, other federal agencies or interagency entities) of EPA-developed highly influential scientific assessments (“HISAs”), studies and reports, including those containing EPA and third party-developed computer models and related datasets and specific applications thereof, designated as “core reference documents”** and referenced at Table 1.1, p. 6 of the EPA-developed Technical Summary Document (“EPA-TSD”) supporting the Administrator’s 2009 GHG Endangerment and Cause or Contribute (“CAA Section 202(a)(1)”) Findings. Such files include *inter alia*:

- a. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the IQA compliance of:
  - i. Specific and detail **peer review charges, instructions and disclosures** issued by EPA to EPA-established federal advisory committee members, EPA-hired third-party contractors, individual peer reviewers and/or peer review panel members, including:
    - A. Disclosure of information about EPA’s peer reviewer selection process, including credentials, transparency and conflict-of-interest requirements;
    - B. Disclosure to prospective and selected peer review panelists of EPA’s requirement to prepare and deliver a peer review report describing the nature and scope of their review and their findings and conclusions, and containing the name of each peer reviewer and a brief description of his or her organizational affiliation, credentials and relevant experiences; and
    - C. Identification of scientific issues for and in-depth discussion of scientific issues with each peer reviewer and peer review panel;
  - ii. **Peer reviewer comments** EPA received from EPA-established federal advisory committees (or committee members), EPA-hired third-party peer review contractors, other federal agencies, interagency entities (e.g., U.S. Global Change Research Program/Climate Change Science Program (“USGCRP/CCSP”) and White House Executive Offices (Office of Management and Budget (“OMB”), Office of Science and Technology Policy (“OSTP”), Council on Environmental Quality (“CEQ”), National Economic Council (“NEC”)), or other peer reviewers concerning *inter alia*:
    - A. **Methods and approaches** EPA could use **to address scientific uncertainties and discuss the precautionary principle or precautionary approach** within the individual EPA-developed USGCRP/CCSP climate science-related assessments, reports, studies, etc.;
    - B. Methods and approaches EPA, together with other U.S. federal agencies and the USGCRP/CCSP, could use to address scientific uncertainties and discuss the precautionary principle or precautionary approach within the individual EPA and other federal agency-

- developed USGCRP/CCSP climate science-related assessments, reports, studies, etc. The records herein requested are in addition to those already reflected in Docket ID Nos. EPA-HQ-OAR-2009-0171-0122 and EPA-HQ-OAR-2009-0171-0124 which concern OMB's first and second round (March, April, etc. 2009) comments focusing on EPA's proposed and final endangerment findings (which docket files are currently available to the public);
- iii. All EPA responses to **peer reviewer comments** EPA received from peer reviewers of EPA-developed HISAs referred to in (ii) above;
  - iv. All **peer review reports, in summary and full versions**, issued by peer reviewers of EPA-developed HISAs referred to in (ii) above;
  - v. **Public comments** received in response to federal register notices that DOC-NOAA had issued on EPA's behalf for the purpose of soliciting public comments on EPA-developed HISAs (which notices are identified below and/or in the accompanying Addendum);
  - vi. Records describing EPA interim and final conclusions concerning the IQA compliance of **EPA revisions of EPA-developed HISAs consistent with peer reviewer comments**.
- b. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the **IQA compliance of climate science-related agreements, contracts and other arrangements** into which EPA had entered to **facilitate the internal and/or external peer review** of EPA-developed HISAs;
- c. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, **focusing on the IQA compliance of EPA-established federal advisory committee, and/or EPA-hired third-party contractor peer reviewer and peer review panel selection processes** actually utilized in connection with EPA-developed HISAs, including the criteria EPA, EPA-established federal advisory committees and/or EPA-hired third-party contractors employed to evaluate peer reviewer professional credentials, relevant experience, affiliations and apparent and actual conflicts-of-interest and lack of independence/bias, both during and after the peer reviewer selection process. Such files include *inter alia*:
- i. EPA, EPA-established federal advisory committee and/or EPA-hired third-party contractor review and **testing performed of the adequacy of peer review candidates' prior peer reviews**;
  - ii. EPA, EPA-established federal advisory committee and/or EPA-hired third-party contractor **peer reviewer independence reviews conducted to assess the eligibility of individual peer reviewer candidates** to participate if employed by EPA, or if participating in an EPA-funded program, in whole or in part, and documentation of EPA-employee peer reviewer participation due to special circumstances – i.e., unique or indispensable expertise, or subject participation of agency-funded university and/or consulting firm scientists to close oversight;

- iii. EPA, EPA-established federal advisory committee and/or EPA-hired third-party contractor **peer reviewer (and family) financial and non-financial conflict-of-interest reviews conducted**, at the time of peer reviewer selection and also throughout the entire course of peer review work until its completion, to reveal:
  - A. Significant investments, consulting arrangements, employer affiliations, grants/contracts, potential financial ties to regulated entities, other stakeholders, and regulatory agencies;
  - B. Work as an expert witness; and/or
  - C. Consulting arrangements, honoraria and sources of grants and contracts;
- iv. EPA, EPA-established federal advisory committee and/or EPA-hired third-party contractor **determinations concerning panel composition and balance** based on the expertise and diversity of subject-relevant scientific perspectives of prospective and actual panel members;
- v. EPA, EPA-established federal advisory committee and/or EPA-hired third-party contractor **measures employed to avoid the repeated use of the same reviewer in multiple assessments**;
- d. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the IQA compliance of EPA, EPA-established federal advisory committee and/or EPA-hired third-party contractor **procedures actually followed to address situations of actual or perceived conflict-of-interest and lack of impartiality (bias) issues** arising before and after panel selection, and to publicly disclose such apparent and actual conflicts of interest;
- e. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the IQA compliance of EPA, EPA-established federal advisory committee and/or EPA-hired third-party contractor **procedures for reviewing and validating the accuracy and clarity of peer review report contents, including**:
  - i. Peer reviewer comments and/or summaries produced consistent with and in satisfaction of specific peer review panel charges;
  - ii. Rationales supporting individual peer reviewer and peer review panel findings;
  - iii. EPA responses to individual peer reviewer and peer review panel comments and to peer review panel report findings;
- f. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the IQA compliance of EPA, EPA-established federal advisory committees and/or EPA third-party contractor safeguards, if any, employed to ensure the **verification of peer reviewer credentials and reputations, and the objectivity and credibility of the EPA, EPA-established federal advisory committee and/or EPA third-party contractor process for selecting, managing and monitoring peer reviewers and peer review panels** in connection with such assessments, from inception to completion, including:

- i. **EPA contractual measures requiring EPA-established federal advisory committees and/or EPA-hired third-party contractor peer review managers and overseers to engage in practices that ensure against or otherwise substantially minimize peer reviewer conflicts-of-interest and biases, including:**
  - A. Mandatory vetting of prospective peer review candidates via internet background searches to identify potential conflicts of interest and appearances of bias or partiality;
  - B. Mandatory use of similar procedures for identifying any changes in selected panelists' conflict of interest status;
  - C. Mandatory disclosure by peer review candidates of nationality, past and present foreign government affiliation, and service on prior, ongoing and ad hoc agency-established federal advisory committees;
  - D. Mandatory written recertification from panelists before a peer review panel is convened, stating that their responses to the questionnaire have not changed;
  - E. Mandatory self-reporting by peer reviewers of any changes that may impact their conflict of interest status or lack of impartiality status at any point in the process;
  - F. Mandatory EPA oversight of EPA-established federal advisory committees and/or EPA-hired third-party contractor peer review management and oversight practices to ensure they follow EPA peer review contractual guidelines;
- g. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, **focusing on the IQA compliance of EPA website plans and actual EPA website use to provide the public with an opportunity to participate in EPA's peer review process**, including inter alia by means of assuring that peer reviewers receive public comments with respect to such assessments that address significant scientific issues with ample time to consider them in their review" (italics in original; boldfaced emphasis added).

On pages 17-21, ITSSD's FOIA request sets forth the following specific records for disclosure in EPA Records Category #2:

"EPA Records Category #2: *Records focusing on third parties' peer review of third-party-developed HISAs which the EPA Administrator had embraced, adopted and disseminated as its own, in support of EPA's GHG Endangerment Findings*

**All EPA climate science-related peer review files (as defined in Section III of this FOIA Request, and hereinafter referred to as "EPA Peer Review Records") created, transmitted, stored and/or archived between January 1, 2005 through December 31, 2011, focused on EPA's validation of the IQA compliance of the substantive and procedural peer reviews conducted, managed or overseen by non-EPA third parties, including other federal agencies and agency-established federal advisory committees, agency-hired third-party peer review contractors (e.g., National Academies of Science/National**

**Research Council hired by DOC-NOAA), and interagency entities (e.g., USGCRP/CCSP), of non-EPA third-party-developed highly influential scientific assessments (“HISAs”), reports and studies (e.g., HISAs, etc. developed by other federal agencies and agency-established federal advisory committees, interagency entities (e.g., USGCRP/CCSP), the IPCC, and the National Academies of Science/National Research Council), including those containing third party-developed computer models and related datasets and specific applications thereof, designated as “core reference documents” and referenced at Table 1.1, p. 6 of the EPA-developed Technical Summary Document (“EPA-TSD”) supporting the Administrator’s 2009 GHG Endangerment and Cause or Contribute (“CAA Section 202(a)(1)”) Findings. Such files include *inter alia*:**

- a. All EPA peer review records created, transmitted, stored and/or archived between January 1, 2005 and December 31, 2011, validating the IQA compliance, **with respect to each non-EPA third-party-developed HISA supporting the EPA Administrator’s CAA Section 202(a)(1) Findings**, of:
  - i. Specific and detail **peer review charges, instructions and disclosures** issued by HISA-developing federal agencies, the IPCC and the NAS/NRC to federal agency-established federal advisory committees, federal agency-hired third-party peer review contractors (e.g., peer review charges issued by DOC-NOAA to its contractor, NAS/NRC, and the latter’s established committee of peer reviewers of DOC-NOAA-developed HISAs), including:
    - A. Disclosure of information about the third party’s peer reviewer selection process, including credentials, transparency and conflict-of-interest requirements;
    - B. Disclosure to prospective and selected peer review panelists of the third party’s requirement to prepare and deliver a peer review report describing the nature and scope of their review and their findings and conclusions, and containing the name of each peer reviewer and a brief description of his or her organizational affiliation, credentials and relevant experiences; and
    - C. Identification of scientific issues for and in-depth discussion of scientific issues with each peer reviewer and peer review panel;
  - ii. **Peer reviewer comments** each third-party HISA-developer (e.g., federal agencies, IPCC, NAS/NRC) received from agency-established federal advisory committee members, hired third-party peer review contractors, interagency entities (e.g., U.S. Global Change Research Program/Climate Change Science Program (“USGCRP/CCSP)) and White House Executive Offices (Office of Management and Budget (“OMB”), Office of Science and Technology Policy (“OSTP”), Council on Environmental Quality (“CEQ”), National Economic Council (“NEC”), and other peer review panels, concerning *inter alia*:
    - A. **Methods and approaches each third-party could use to address scientific uncertainties and discuss the precautionary principle or precautionary approach** within such third party-developed HISAs;

- iii. Each **third-party's** (e.g., other federal agency, IPCC, NAS/NRC) **responses to the peer reviewer comments** received with respect to third-party-developed HISAs from the peer reviewers identified in (ii) above;
- iv. All **peer review reports, in summary and full versions**, issued to third parties by the peer reviewers identified in (ii) above;
- v. Inclusions within third party-developed HISAs of **public comments received in response to federal register notices** issued for the purpose of soliciting public comments on third party-developed HISAs;
- vi. **Interim and final conclusions regarding the consistency of third party revisions to third party-developed HISAs with peer reviewer comments;**
- b. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, validating the **IQA compliance of all climate science-related agreements, contracts and other arrangements into which third party HISA-developers had entered to facilitate the internal and/or external peer review** of third party-developed HISAs;
- c. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on **validation of IQA compliance of third party federal advisory committee, and/or third-party hired contractor peer reviewer and peer review panel selection processes actually utilized** in connection with the peer review of third party-developed HISAs, including **criteria employed to evaluate peer reviewer professional credentials, relevant experience, affiliations and apparent and actual conflicts-of-interest and lack of independence/bias**, both during and after the peer reviewer selection process. Such files include *inter alia*:
  - i. Third party, third party-established federal advisory committee and/or third party-hired contractor review and testing performed of the adequacy of peer review candidates' prior peer reviews;
  - ii. Third party, third party-established federal advisory committee and/or third party-hired contractor peer reviewer independence reviews conducted to assess the eligibility of individual peer reviewer candidates to participate if employed by that same third party (e.g., DOC-NOAA), or if participating in a third party-funded climate science research program (e.g., DOC-NOAA-funded climate science research programs), and documentation of third party (e.g., federal agency) employee peer reviewer participation due to special circumstances – i.e., unique or indispensable expertise, or subject participation of agency-funded university and/or consulting firm scientists to close oversight;
  - iii. Third party, third party-established federal advisory committee and/or third party-hired peer review contractor peer reviewer (and family) financial and non-financial conflict-of-interest reviews conducted, at the time of peer reviewer selection and also throughout the entire course of peer review work until its completion, to reveal:
    - A. Significant investments, consulting arrangements, employer affiliations, grants/contracts, potential financial ties to regulated entities, other stakeholders, and regulatory agencies;



- B. Work as an expert witness; and/or
  - C. Consulting arrangements, honoraria and sources of grants and contracts;
- d. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on validation of IQA compliance of **third party, third party-established federal advisory committee and/or third party-hired peer reviewer contractor procedures actually followed to address situations of actual or perceived conflict-of-interest and lack of impartiality (bias)** issues arising before and after panel selection, and to publicly disclose such apparent and actual conflicts of interest;
- e. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on **validation of IQA compliance of third party, third party-established federal advisory committee and/or third party-hired contractor procedures for reviewing and validate the accuracy and clarity of peer review report contents**, including:
- i. Peer reviewer comments and/or summaries produced consistent with and in satisfaction of specific peer review panel charges;
  - ii. Rationales supporting individual peer reviewer and peer review panel findings;
  - iii. Third party responses to individual peer reviewer and peer review panel comments and to peer review panel report findings;
- f. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on **validation of IQA compliance of third party, third party-established federal advisory committees and/or third party-hired contractor safeguards employed to ensure the verification of peer reviewer credentials and reputations, and the objectivity and credibility of the third party, third party-established federal advisory committee and/or third-party hired contractor process for selecting, managing and monitoring peer reviewers and peer review panels** in connection with third party-developed HISAs, from inception to completion, including:
- i. **Third party contractual measures** requiring third party-established federal advisory committees and/or third party-hired peer review contractors to engage in practices that ensure against or otherwise substantially minimize potential peer reviewer conflicts-of-interest and biases, including:
    - A. Mandatory vetting of prospective peer review candidates via internet background searches to identify potential conflicts of interest and appearances of bias or partiality;
    - B. Mandatory use of similar procedures for identifying any changes in selected panelists' conflict of interest status;
    - C. Mandatory disclosure by peer review candidates of nationality, past and present foreign government affiliation, and service on prior, ongoing and ad hoc agency-established federal advisory committees;
    - D. Mandatory written recertification from panelists before a peer review panel is convened, stating that their responses to the questionnaire have not changed;

- E. Mandatory self-reporting by peer reviewers of any changes that may impact their conflict of interest status or lack of impartiality status at any point in the process;
- F. Mandatory third party oversight of third party-established federal advisory committees and/or third party-hired peer review contractor peer review management and oversight practices to ensure they follow third party peer review contractual guidelines;
- g. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on **validation of IQA compliance of third party website plans and actual third party website use to provide the public with an opportunity to participate in such third party’s peer review process**, including *inter alia* by means of assuring that peer reviewers receive public comments with respect to such assessments that address significant scientific issues with ample time to consider them in their review;
- h. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on **interagency climate science-related agreements entered into between EPA and other federal agencies or between EPA and interagency entities**, such as the U.S. Global Change Research Program (“USGCRP”), for the purpose of securing such other parties’ climate science for use by EPA, **subject to EPA’s compliance with the Information Quality Act**, pursuant to:
  - i. EPA’s cooperation authority under Clean Water Act Section 104(b)(2) and/or Clean Air Act Section 103(b)(2);
  - ii. Economy Act (31 U.S.C. §1535) agreements” (italics in original; boldfaced emphasis added).

On pages 23-27, ITSSD’s FOIA request sets forth the following specific records for disclosure in EPA Records Category #3:

“EPA Records Category #3: Records focusing on an interagency climate panel’s summary and synthesis of twenty-eight individual HISAs designated as “core reference documents” supporting EPA’s GHG Endangerment Findings

All **“EPA climate science-related peer review files”** (as defined in Section III of this FOIA Request, and hereinafter referred to as **“EPA Peer Review Records”**) created, transmitted, stored and/or archived between January 1, 2005 through December 31, 2011, **focused on the substantive and procedural peer review of the summary and synthesis of twenty-eight EPA-TSD-designated “core reference documents” the EPA-TSD identified as supporting the Administrator’s 2009 GHG Endangerment and Cause or Contribute (“CAA Section 202(a)(1)”) Findings**, which had been conducted on EPA’s behalf by an OMB-selected interagency peer review climate panel, including:

- a. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the IQA compliance of:

- i. Specific and detail **peer review charges, instructions and disclosures** issued by EPA to the **OMB-selected interagency peer review climate panel**, including:
  - A. Disclosure of information about **OMB’s peer reviewer selection process, including credentials, transparency and conflict-of-interest requirements**;
  - B. Disclosure to prospective and selected peer review panelists of EPA’s requirement to prepare and deliver a peer review report describing the nature and scope of their review and their findings and conclusions, and containing the name of each peer reviewer and a brief description of his or her organizational affiliation, credentials and relevant experiences; and
  - C. Identification of scientific issues for and in-depth discussion of scientific issues with each peer reviewer;
- ii. **OMB-selected interagency peer review climate panel and peer reviewer comments** received by EPA, including methods and approaches EPA could use to address scientific uncertainties and discuss the precautionary principle or precautionary approach within the EPA-TSD;
- iii. **EPA responses to OMB-selected interagency peer review climate panel and peer reviewer comments**;
- iv. **OMB-selected interagency peer review climate panel reports in summary and full versions**;
- v. **Records describing EPA interim and final conclusions concerning the IQA compliance of EPA-TSD revisions made consistent with OMB-selected interagency peer review climate panel recommendations**;
- b. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the **IQA compliance of climate science-related agreements, contracts and other arrangements into between EPA and OMB to coordinate and manage the interagency peer review climate panel’s peer review of the EPA-TSD**;
- c. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the **IQA compliance of the OMB interagency peer review climate panel selection process actually utilized, including the criteria OMB employed to evaluate peer reviewer professional credentials, relevant experience, affiliations and apparent and actual conflicts-of-interest and lack of independence/bias**, both during and after the peer reviewer selection process. Such files include *inter alia*:
  - i. OMB review and testing performed of the adequacy of the interagency peer review climate panelists’ prior peer reviews;
  - ii. OMB peer reviewer independence reviews conducted to assess the eligibility of prospective interagency peer review climate panel candidates to participate if employed by EPA, and documentation of EPA-employee peer reviewer participation due to special circumstances – i.e., unique or indispensable expertise, or subject participation of agency-funded university and/or consulting firm scientists to close oversight;

- iii. **Peer reviewer (and family) financial and non-financial conflict-of-interest reviews OMB conducted at the time of peer reviewer selection** and also throughout the entire course of peer review work until its completion to reveal, with respect to prospective interagency peer review climate panel candidates:
  - A. Significant investments, consulting arrangements, employer affiliations, grants/contracts, potential financial ties to regulated entities, other stakeholders, and regulatory agencies;
  - B. Work as an expert witness; and/or
  - C. Consulting arrangements, honoraria and sources of grants and contracts;
- iv. **OMB determinations, shared with EPA, concerning interagency peer review climate panel composition and balance** based on the expertise and diversity of subject-relevant scientific perspectives of prospective and actual panel members;
- v. **OMB measures employed to avoid the repeated use of reviewers that EPA and other federal agencies had previously used to review any of the twenty-eight summarized and synthesized HISAs designated as “core reference documents”**;
- d. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the **IQA compliance of OMB procedures actually followed to address situations of actual or perceived conflict-of-interest and lack of impartiality (bias)** issues arising before and after the interagency peer review climate panel’s selection, and to publicly disclose such apparent and actual conflicts of interest;
- e. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the **IQA compliance of OMB procedures for reviewing and validate the accuracy and clarity of peer review report contents**, including:
  - i. Peer reviewer comments and/or summaries produced consistent with and in satisfaction of specific peer review panel charges;
  - ii. Rationales supporting individual peer reviewer and peer review panel findings;
  - iii. EPA responses to individual peer reviewer and peer review panel comments and to peer review panel report findings;
- f. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the **IQA compliance of OMB safeguards, if any, employed to ensure the verification of peer reviewer credentials and reputations, and the objectivity and credibility of the OMB process for selecting, managing and monitoring peer reviewers and peer review panels** in connection with such assessments, from inception to completion, including:
  - i. EPA contractual measures requiring OMB to engage in practices that ensure against or otherwise substantially minimize peer reviewer conflicts-of-interest and biases, including:

- A. Mandatory vetting of prospective peer review candidates via internet background searches to identify potential conflicts of interest and appearances of bias or partiality;
  - B. Mandatory use of similar procedures for identifying any changes in selected panelists' conflict of interest status;
  - C. Mandatory disclosure by peer review candidates of nationality, past and present foreign government affiliation, and service on prior, ongoing and ad hoc agency-established federal advisory committees;
  - D. Mandatory written recertification from panelists before a peer review panel is convened, stating that their responses to the questionnaire have not changed;
  - E. Mandatory self-reporting by peer reviewers of any changes that may impact their conflict of interest status or lack of impartiality status at any point in the process;
  - F. Mandatory EPA oversight of OMB peer review management and oversight practices to ensure they follow EPA peer review contractual guidelines;
- g. All EPA peer review records created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, focusing on the **IQA compliance of EPA website plans and actual EPA website use to provide the public with an opportunity to participate in EPA's peer review process**, including *inter alia* by means of assuring that the peer reviewer members of the interagency peer review climate panel receive public comments with respect to such assessments that address significant scientific issues with ample time to consider them in their review;
- h. All **EPA peer review records** created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, **focusing on collaborative and/or cooperative climate science-related research, data-sharing, information, adaptation, etc. programs arising from international climate science-related agreements entered into between EPA and the United Nations Environment Program ("UNEP") or between the U.S. Global Change Research Program/Climate Change Science Program (in which the EPA participated) and UNEP, the World Meteorological Organization, IPCC, World Climate Research Programme, United Nations Educational, Scientific and Cultural Organization ("UNESCO"), Intergovernmental Oceanographic Commission ("IOC"), and/or International Council for Science ("ICSU")** which agreements had been treated as legally binding executive agreements (treaties) under Article II of the U.S. Constitution *not* requiring a two-thirds super-majority vote in the U.S. Senate\* and had been subject to U.S. federal agency reporting under the Case-Zablocki Act (1 U.S.C. §112b), pursuant to which:
- i. EPA had:
    - A. Been provided information directly or indirectly assisting its development of the Administrator's 2009 CAA Section 202(a)(1) Findings and the EPA-TSD, which legal instruments had been subject to EPA's validation of IQA compliance; and/or

- B. Assisted IPCC and UNEP/WMO in the development and review of the 4<sup>th</sup> Assessment Report;
- C. Assisted UNESCO, IOC, ICSU and other international climate science-related programs funded by EPA and/or the USGCRP;
- ii. **The EPA-UNEP Memorandum of Understanding** executed on February 21, 2011 followed, which *inter alia* provided for the temporary assignment of EPA and UNEP personnel to the other, including:
  - A. To the EPA, for purposes of contributing, directly or indirectly, to the development of the Third U.S. National Climate Assessment; and/or
  - B. To the IPCC, for purposes of contributing, directly or indirectly, to the development and review of the IPCC 5<sup>th</sup> Assessment Report” (italics in original; boldfaced emphasis added).

On pages 29-30, ITSSD’s FOIA request sets forth the following specific records for disclosure in EPA Records Category #4:

“EPA Records Category #4:

- a. All **“EPA climate science-related peer review files”** (as defined in Section III of this FOIA Request, and hereinafter referred to as **“EPA Peer Review Records”**) created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, **focusing on EPA’s validation of the IQA compliance of EPA’s disposition of information quality issues (e.g., stakeholder requests for correction and/or reconsideration) arising with respect to EPA-developed HISAs through general public notice and comment proceedings pursuant to the U.S. Administrative Procedure Act** rather than pursuant to separate more science-focused and technically oriented proceedings the IQA calls for.
- b. All **EPA peer review records** created, transmitted, stored and/or archived from January 1, 2005 through December 31, 2011, **focusing on EPA’s validation of the IQA compliance of third parties’ (other federal agencies’ IPCC’s NRC’s) disposition of information quality issues (e.g., stakeholder requests for correction and/or reconsideration) arising with respect to HISAs developed by such third parties through general public notice and comment proceedings (e.g., pursuant to the U.S. Administrative Procedure Act)** rather than pursuant to the separate and more science-focused and technically oriented proceedings the IQA calls for” (boldfaced emphasis added).

It is obvious that the specific records so described in EPA Records Category #4 are those identified above on page 2 of this correspondence as *“Records focusing on EPA and third party administrative mechanisms employed to ensure that affected persons may seek and obtain correction or reconsideration of scientific information EPA and such third parties had disseminated in violation of OMB Guidelines”* (italics in original).

Lastly, on pages 39-41, ITSSD’s FOIA request sets forth a definition of the term “EPA climate science-related peer review files”, otherwise referred to as “EPA Peer Review Records”. That definition clearly contains a reference to specific files including those focusing on:

**“peer reviews conducted by [...] EPA or EPA-hired contractors, or...by third parties [...] of globally, regionally and/or locally focused simple and integrated assessment deterministic, stochastic and/or dynamic system simulation science and econometric computer models and related datasets, or specific applications of such models and datasets, described therein which supported the findings of such “core reference documents”, and which computer models and related datasets or specific applications of such models and datasets were developed individually and/or jointly by the IPCC, EPA, other federal agencies, EPA- and other federal agency-funded universities, and other third parties”** (boldfaced emphasis added).

ITSSD’s FOIA request further identifies the specific EPA-TSD designated “core reference documents” that EPA had been obliged to adequately peer review in conformance with the Information Quality Act. These documents incorporated various types of computer models and related datasets and applications thereof as support for EPA findings contained therein that EPA also had been obliged to adequately peer review. As set forth on page 40, these included *inter alia*:

- SAP1.3/CCSP2008g);
- SAP2.1a/CCSP(2007b);
- SAP2.4/CCSP(2008h);
- SAP3.1/CCSP(2008c);
- SAP3.2/CCSP(2008d);
- SAP3.3/CCSP(2008i);
- SAP3.4/CCSP(2008a);
- SAP4.1/CCSP(2009b);
- SAP4.5/CCSP(2007a);
- SAP4.6/CCSP(2008b);
- EPA, *Impacts of Global Change on Regional U.S. Air Quality*;
- DOC-NOAA, *The State of the Climate in 2008*;
- NRC(2001a);
- Arctic Council, *Arctic Climate Impact Assessment*;
- IPCC(2007a);
- IPCC(2007d); and
- IPCC(2000).

On page 41, ITSSD’s FOIA request also identifies for disclosure third party-developed *non-core* reference documents not otherwise expressly referenced in the EPA-TSD that had been incorporated by reference within EPA-TSD designated “core reference documents”. ITSSD’s FOIA request identifies at least five of these documents:

- EPA-developed SAP4.4/CCSP(2008), incorporated by reference in DOC-NOAA-developed *Global Climate Change Impacts in the United States* (p. 59 of the Addendum accompanying ITSSD’s new FOIA request and Appendix 3, pp. 83-84);
- DOC-NOAA-developed SAP 2.2/CCSP(2007), incorporated by reference in DOC-NOAA-developed *Global Climate Change Impacts in the United States* (Appendix 3, pp. 83-84);
- DOC-NOAA-developed SAP 5.1/CCSP(2008), incorporated by reference in DOC-NOAA-developed *Global Climate Change Impacts in the United States* (Appendix 3, pp. 83-84);
- DOC-NOAA-developed SAP 5.2/CCSP(2009), incorporated by reference in DOC-NOAA-developed *Global Climate Change Impacts in the United States* (Appendix 3, pp. 83-84);
- DOC-NOAA-developed SAP 5.3/CCSP(2008), incorporated by reference in DOC-NOAA-developed *Global Climate Change Impacts in the United States* (Appendix 3, pp. 83-84).

ITSSD sincerely regrets that its new FOIA request cannot be clarified in as “simple” a manner as your office would prefer. This is not possible considering the breadth of the endangerment analysis CAA Section 202(a)(1) required the Administrator to undertake and the various standards with which the Information Quality Act required EPA to comply.

The Administrator’s CAA Section 202(a)(1) Findings, for example, had been supported by twenty-eight (28) core reference documents developed mostly by third parties other than EPA and at least five (5) other non-core reference documents incorporated within such core reference documents. Each of these documents constituted a “highly influential scientific assessment” (“HISAs”) within the meaning of relevant OMB and EPA IQA-implementing guidelines, which required a thorough and robust peer review. In addition, multiple federal agencies, agency-established federal advisory committees, interagency entities, internal and external individual peer reviewers and peer review contractors had been involved in the detailed process of peer reviewing such HISAs, which processes EPA had been required to validate consistent with the most rigorous and least discretionary standards imposed by the Information Quality Act. Furthermore, the IQA obliged EPA to facilitate an adequate administrative review of requests for correction or reconsideration of improperly peer reviewed HISAs. As a result, EPA had been legally required to ensure, at four different levels, the IQA compliance of the peer review processes it and third parties had employed to validate the science EPA adopted, endorsed and used as support for its GHG Endangerment Findings. ITSSD’s FOIA request thus provides an abundance of specificity to aid EPA in locating records that would substantiate EPA’s IQA compliance at each of these four levels.

In sum, ITSSD agrees that the italicized paragraph excerpted from page 5 of EPA-HQ-2014-008026, as reproduced in your correspondence of July 22, 2014, adequately summarizes the overall scope of ITSSD’s new FOIA request which covers four distinct categories of specific records identified and described with painstaking particularity. Given its affirmative response to your correspondence, ITSSD looks forward to EPA’s prompt processing of its FOIA request.

If you find that this response is inadequate and does not reasonably describe the records requested, EPA should deny the request in full to permit the appeals process to move forward. In the event ITSSD’s request is denied in part, ITSSD requests that EPA disclose the segregable portions and



provide a *Vaughn v. Rosen* index justifying the withholding of non-segregable information.

Very truly yours,

*Lawrence A. Kogan*

Lawrence A. Kogan  
CEO  
ITSSD