



April 28, 2014

Mr. Larry Gottesman
National FOIA Officer
Office of Environmental Information
U.S. Environmental Protection Agency, Headquarters
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

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Re: **ITSSD FOIA Fee Waiver Request Clarification**
FOIA (Consolidated) Request No. EPA-HQ-2014-004938
(formerly, EPA-HQ-2014-004938; EPA-R3-2014-004862; EPA-R4-2014-005118; EPA-R5-2014-004881; EPA-R6-2014-005004; EPA-R8-2014-004910; EPA-R10-2014-004857)

Dear Mr. Gottesman:

On March 17, 2014, Requester ITSSD mailed nine separately prepared FOIA Requests dated March 14, 2014 to Environmental Protection Agency (“EPA”) Headquarters (“EPA-HQ”) and eight different EPA regional offices¹, pursuant to the Freedom of Information Act, 5 U.S.C. §552 and the Environmental Protection Agency (“EPA”) Freedom of Information Act-implementing regulations (40 C.F.R. §2.107(l)(1)-(3)). Between March 23 and March 28, 2014, ITSSD received EPA acknowledgements of receipt of such requests via phone, email and/or the FOIAonline website.²

On March 28, 2014, ITSSD received from your office (EPA-HQ Office of Environmental Information (“OEI”)) via email three separate correspondences dated March 27, 2014, denying a fee waiver with respect to each ITSSD FOIA Request filed. Your three correspondences set forth the following reason for the denials:

“We have reviewed your fee waiver justifications and based on the information provided, we are denying your requests for a fee waiver. You have not expressed a specific intent to disseminate the information to the general public. As a result of you [sic] failing to meet the above criteria, accordingly, there is no need to address the remaining prongs of the fee waiver criteria.”

As will be demonstrated herein, ITSSD did indeed express “a specific intent to disseminate the information to the general public” in its original request and will further supplement that with additional clarifying information. Moreover, ITSSD will further demonstrate that it meets all of the “remaining prongs of the fee waiver criteria” in its original request but will herein clarify and supplement its original submission, as well, to avoid your returning our fee waiver request for any perceived deficiency in meeting those other prongs.

Also, on March 28, 2014, ITSSD received an email communication from Ms. Wanda Calderon, the designated FOIA Officer/Liaison for EPA Region 2 which, until then, had not provided

acknowledgement of receipt of ITSSD's Region 2 FOIA Request. After confirming receipt, Ms. Calderon's communication relayed to ITSSD the following new information: "...instructions disseminated were that HQ is taking the lead on this FOIA with input from the regions."³ Presumably, Ms. Calderon was referring to the instructions provided by your office (EPA-HQ-OEI).

Ms. Calderon's message was thereafter reinforced by a separate letter correspondence ITSSD received on April 1, 2014 from Ms. Dana Hyland of EPA's Office of Air and Radiation ("EPA-OAR").⁴ Ms. Hyland's correspondence indicated that "EPA Headquarters will be consolidating and coordinating the response to your requests under the tracking number listed above...EPA-HQ-2014-004938". Ms. Hyland's correspondence also stated that

"Your request does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them...We would like to provide you the opportunity to clarify the records that you are seeking so that EPA can process your request...*Please contact me at hyland.dana@epa.gov with your clarification*" (emphasis added).

Since, as it appears, both EPA-HQ-OEI *and* EPA-HQ-OAR will now be handling the consolidated response to the nine previously filed ITSSD EPA FOIA Requests, and EPA-OAR has provided ITSSD with the opportunity to clarify those requests, ITSSD shall submit its consolidated "**FOIA Request Clarification**" to *both* EPA-HQ offices under separate cover.

In light of these changes, logic and consistency dictate that ITSSD's response to your office's denials of ITSSD's previously filed fee waiver requests should also be consolidated and treated by *both* offices as a "**FOIA Fee Waiver Request Clarification**".

With this understanding, ITSSD respectfully submits that each previously filed ITSSD EPA FOIA Request ("Section V - Request for Public Interest Fee Waiver") specified how ITSSD satisfies factor 3 of the six-factor fee waiver test set forth in 40 C.F.R. §2.107(l)(2)(iii).

"[D]isclosure will contribute to "public understanding," as opposed to the understanding of the requester or a narrow segment of interested persons. ITSSD possesses the intent and capability to make the results of this request publicly available through various media. ITSSD's professional staff and Board of Advisors shall analyze the information responsive to this request, employ their editorial skills for purposes of converting raw materials into distinct works, and share the resulting information products with the public, whether in the form of reports, studies, press releases, blog posts, or various other methods of online educational outreach. ITSSD also will distribute the analyzed information to those members of Congress possessing interest in and oversight responsibilities concerning such matters."⁵

ITSSD has further substantiated its position in this FOIA Fee Waiver Request Clarification, which discusses how ITSSD satisfies Factors 1-6 of the six-factor fee waiver test set forth in 40 C.F.R. §2.107(l)(1)-(3).

When considering whether ITSSD meets the six-factor fee waiver criteria, EPA should recall that FOIA carries a presumption of disclosure and that the FOIA fee waiver amendments of 1986 were designed specifically to allow non-profit, public interest groups such as ITSSD access to government documents without the payment of fees. The legislative history underlying such FOIA amendments reflected Congress' particular concern that agencies had been using search and duplication costs to prevent critical public monitoring of their activities. As U.S. Senator Leahy then commented,

“Indeed, experience suggests that agencies are most resistant to granting fee waivers when they suspect that the information sought may cast them in a less than flattering light or may lead to proposals to reform their practices. Yet that is precisely the type of information which the FOIA is supposed to disclose, and agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information....”⁶

In light of Congress' expressed concerns, the District of Columbia Circuit Court of Appeals previously stated, in *Better Gov't Ass'n v. Department of State*⁷ that:

“The legislative history of the fee waiver provision reveals that it was added to FOIA ‘in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests,’ in particular those from journalists, scholars and nonprofit public interest groups.[] In 1980, however, after some experience with the fee waiver provision, a congressional subcommittee concluded that ‘[m]ost agencies have ... been too restrictive with regard to granting fee waivers for the indigent, news media, scholars’ and, therefore, recommended that the DOJ develop guidelines to deal with these problems.”⁸

Significantly, the requesters seeking public disclosure of governmental records in *Better Gov't* were prolific filers of FOIA requests. They consisted of “a nonprofit organization that conduct[ed] investigations designed to expose waste, fraud and abuse in the functioning of government programs”, and “a nonprofit [environmental] organization ‘dedicated to the promotion of conservation principles on behalf of a large national...constituency.’”⁹ If, as *Better Gov't* suggests, it is true that a federal agency cannot inappropriately wield FOIA's fee waiver provisions as an effective obstacle to prevent activist groups such as these (*which were known to utilize FOIA to monitor and challenge government activities*) from obtaining the requested information, it would be highly inappropriate for EPA to use 40 C.F.R. §2.107(l)(1)-(3) as an effective obstacle to prevent ITSSD from obtaining the records it requested.

Unlike the nongovernmental organizations in the above-referenced case, ITSSD is primarily an educational nonprofit nongovernmental organization that takes a scholarly approach to publicly developing and disseminating information about government activities it obtains through its own research and development initiatives. ITSSD has never, prior to March 14 2014, filed a request under any FOIA statute seeking records from any federal, state or local government agency.

The following annotated FOIA Fee Waiver Request Clarification hereinafter sets forth, in ordered fashion, how ITSSD meets the requirements of each of Factors 1-6 of the six-factor fee waiver test.

Factor 1: The Subject of the Requested Records Concern Identifiable Operations or Activities of the Federal Government, With a Connection That is Direct and Clear (40 C.F.R. §2.107(D)(2)(i))

The ITSSD FOIA Request Clarification to which this ITSSD FOIA Fee Waiver Request Clarification pertains makes clear that it seeks disclosure of all

“EPA records (“all EPA climate science-related peer review files”) 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 EPA- and third-party- developed climate science-related assessments and reports upon which the Administrator primarily relied in reaching positive greenhouse gas (“GHG”) endangerment and cause or contribute findings under Clean Air Act Sec. 202(a)(1).”¹⁰

The ITSSD FOIA Request Clarification sets forth a detailed description (in Section I) of the many relevant climate science-related files that fall within the scope of said request, along with applicable definitions (in Section II), in addition to an explanatory annotated Addendum and five Appendices.

The records ITSSD requested seek substantiation of specific EPA scientific peer review operations and activities the agency was obliged to have undertaken in fulfillment of its federal statutory¹¹ and administrative^{12 13} mandate to ensure the quality, integrity and reliability of the highly influential scientific assessments (“HISAs”) that had “heavily” and “primarily” influenced the Administrator’s CAA Section 202(a) GHG findings. Section I of the ITSSD FOIA Request Clarification, Section I.B of the Addendum and Appendices 1-3 indicate that these supporting assessments, especially “core reference documents”, are listed in the EPA Technical Summary Document (“EPA-TSD”) accompanying those findings.

As Section B.1 of the Addendum discusses, the President, early in his administration, was concerned that public trust in Government science would be compromised unless federal agencies, including EPA, ensured the integrity of the scientific peer review process they employed in producing scientific information upon which they grounded policy decisions. As a result, in March 2009, he issued a policy memorandum setting forth principles for agencies to following in ensuring the integrity of agency science, which the White House Office of Science and Technology Policy’s Director subsequently reduced to implementing guidelines. Both the President’s memorandum and the OSTP Director’s implementing guidelines refer *inter alia* to the importance of the scientific peer review process “in complying with and applying relevant statutory standards” – i.e., the IQA and agency IQA-implementing guidelines.¹⁴

EPA’s vetting and use of the many third-party-developed climate science-related assessments that the Administrator relied upon to reach positive GHG endangerment and cause or contribute findings, and EPA’s subsequent promulgation of economically significant national GHG mobile and

stationary source emissions regulations premised on such findings, are precisely the types of government activities and operations to which the IQA, EPA IQA-implementing guidelines and the White House scientific integrity memorandum and guidelines are directed.

Sections I and II of ITSSD's FOIA Request Clarification indicate that the scientific assessments upon which the primarily Administrator relied were minimally developed by EPA and mostly developed by other federal agencies pursuant to the interagency entity known as the U.S. Global Change Research Program/Climate Change Science Program ("USGCRP/CCSP"). These sections of ITSSD's FOIA Request Clarification also indicates that much of the climate science referenced in these USGCRP/CCSP synthetic assessment products ("SAPs") and other reports reference climate science developed by intergovernmental bodies such as the United Nations Intergovernmental Panel on Climate Change ("IPCC"). The Addendum accompanying ITSSD's FOIA Request Clarification reveals that there was interagency agreement under the USGCRP/CCSP to classify such assessments as "highly influential scientific assessments" ("HISAs") given their novelty, controversial nature and economic significance. Section B.1 of the Addendum, in particular, indicates that EPA embraced and publicly disseminated these assessments and supporting scientific literature, data and statistical models as its own, thereby subjecting the peer review process EPA, EPA-hired third-party contractors, and other federal agencies utilized to vet them to the highest and most rigorous level information quality standards applicable to HISAs.¹⁵

Sections I and II of ITSSD's FOIA Request Clarification, for example, seeks disclosure *inter alia* of documentation evidencing specific practices engaged in by EPA, and/or by third parties with which EPA entered into agreements (and the agreements themselves), to render peer review services, including peer reviewer selection and peer review panel composition, management, oversight and review, as well as, substantive peer review of climate science-related assessments. To this end, Sections I and II of ITSSD's FOIA Request Clarification seek disclosure of EPA and/or contracted third-party records demonstrating the criteria employed for purposes of peer reviewer selection and peer review panel composition, management oversight and review, including with respect to actual testing performed to ensure: against perceived and actual financial and nonfinancial conflicts-of-interest and peer reviewer bias; independence from agency, university and corporate sources; and professional credentials and relevant experience. Third parties for such purposes include other federal agencies, interagency entities, intergovernmental organizations, specially formed federal advisory committees and private contractors.

In addition, Sections I and II of ITSSD's FOIA Request Clarification seeks disclosure of climate science-related files containing the full and summary versions of all peer reviewer and peer review panel and federal advisory committee reports, interagency entity peer review reports, correspondences and other documents referred to in peer review panel/federal advisory committee meeting minutes. Sections I and II of ITSSD's FOIA Request Clarification also seek disclosure *inter alia* of agency records evidencing EPA or EPA-hired third party contractor use of adequate transparency criteria to ensure the facilitation of quality-based, focused and in-depth peer review panel discussions of the issues, provision of the rationale and supportability of the panel's findings, verification of the accuracy and clarity of the panel report, and avoidance of the repeated use of the same reviewer in multiple assessments.

Sections I and II of ITSSD's FOIA Request Clarification, furthermore, seeks disclosure of EPA climate science-related files demonstrating, for example, the extent to which EPA had planned to disclose and had actually disclosed to the public on its publicly accessible website clear and understandable (user-friendly) information about, *inter alia*, the substantive peer review, individual peer reviewer selection and peer review panel composition processes EPA and/or contracted third-parties had actually undertaken, the specific EPA peer review panel charges actually made, the contents of required EPA peer review reports containing peer reviewer comments or summaries of peer reviewer comments produced in satisfaction of the specific EPA peer review panel charges, and all EPA responses to individual peer reviewer and peer review panel comments and reports.

Sections I and II of ITSSD's FOIA Request Clarification also seeks disclosure of EPA climate science-related files demonstrating that EPA and contracted third parties had actually afforded the public via EPA's website(s), following federal register notification, an opportunity and sufficient time to participate in EPA's peer review process. The records requested include those *inter alia* assuring that peer reviewers had received public comments that addressed significant scientific issues with ample time to consider them in their review. In this regard, Sections I and II of ITSSD's FOIA Request Clarification seek disclosure of EPA climate science-related files substantiating that EPA's chosen method for addressing public stakeholder IQA requests for correction ("RFCs") of disseminated EPA climate science reports and assessments underlying EPA's proposed Clean Air Act ("CAA") Section 202(a)(1) findings was sufficiently separate from and adequate to achieve that objective and to satisfy the relevant statutory and administrative requirements of the IQA and OMB and EPA IQA-implementing guidelines.

Lastly, Sections A and B of the Addendum accompanying ITSSD's FOIA Request Clarification provides relevant contextual information describing the administrative dynamics and legal challenges surrounding EPA's direct and indirect undertaking of climate science-related peer review operations and activities in fulfillment of the Administrator's obligations under CAA Section 202(a), that EPA FOIA officials can use in identifying and locating the records requested.

In sum, EPA, a federal agency, was obliged as a matter of statute and administrative practice and procedure to undertake each of the activities described above. It is beyond question that "[t]he subject of the requested records concern identifiable "operations or activities of Federal Government, with a connection that is direct and clear"¹⁶ – i.e., records pertaining to the internal and external operations of the EPA.

Therefore, EPA should find that ITSSD's FOIA Request Clarification (recently consolidated under case file EPA-HQ-2014-004938) satisfies the first factor of the six-factor fee waiver test.

Factor 2: Disclosure of the Requested Records Is Likely to Contribute to Public Understanding of Government Operations or Activities (40 C.F.R. §2.107(l)(2)(ii))

ITSSD's FOIA Request Clarification makes abundantly clear that the Administrator had heavily and primarily relied upon, and had embraced and disseminated as its own, three EPA-developed and more numerous third-party-developed climate science-related assessments, reports and studies as the

basis for reaching positive CAA Section 202(a) findings. These findings then served to trigger EPA's issuance of economically significant national mobile and stationary source GHG emissions control regulations.

The administrative record reveals that the EPA-TSD designated a total of twenty-eight (28) of these climate science-related assessments, reports and studies as "core reference documents", that all "core reference documents" except for two authored by EPA as 'lead development agency' had been authored by third parties consisting of other federal agencies operating pursuant to the interagency USGCRP/CCSP and the National Research Council ("NRC"), and that that most, if not all, such "core reference documents" had referenced the climate science findings of the UN intergovernmental IPPC as a primary basis for the findings contained therein. The administrative record also reveals that EPA and several such federal agencies formed special purpose federal advisory committees to prepare and/or undertake the review of the climate science-related assessments for which they had been designated 'lead' agency developer.

Relevant law and implementing administrative guidelines obliged EPA to ensure that its ultimate peer review of all such climate science-related assessments, reports and studies had complied fully with the highest and most rigorous level IQA and OMB and EPA IQA-implementing peer review, conflict-of-interest and transparency standards applicable to HISAs. Relevant law and implementing administrative guidelines also obliged EPA to ensure that EPA and all other federal agencies responsible for preparing and disseminating the HISAs upon which the Administrator's CAA Section 202(a) findings primarily and heavily relied provided appropriate mechanisms to administratively review requests for correction of such climate science-related assessments.

The Factor 1 discussion above describes in summary fashion the specific types of EPA records identified in greater detail in Sections I and II of ITSSD's FOIA Request Clarification. These records concern important government operations and activities about which EPA has not yet comprehensively disclosed information to the public in accordance with law.

As the Addendum accompanying ITSSD's FOIA Request Clarification reveals, EPA has not publicly disclosed much information about these government operations and activities. Due to the unavailability and inaccessibility of such records, the public has remained uninformed and lacks a basic understanding of these critical government operations and activities and their integral role in agency science development and, ultimately, agency policymaking. Only EPA's immediate and comprehensive disclosure of the requested records is likely to contribute to public understanding of how the scientific peer review process undertaken by EPA and other federal agencies to vet the HISAs in question and the administrative mechanisms they employed to review stakeholder requests for correction of such HISAs actually serve to ensure the integrity of the body of EPA and other federal agency-developed climate-related science produced, and the EPA and other federal agency regulatory and policymaking decisions reached based upon them.

There are various incidents of EPA nondisclosure of relevant information concerning EPA and other federal agency peer review operations and activities surrounding the development of the climate-related science these agencies had produced. Such nondisclosure continues to cast public doubt on the quality, integrity and reliability of those processes and to promote ongoing public

misunderstanding about how those processes, if they had been properly executed, could have resulted in valid EPA climate science GHG-related findings.

For example, only EPA public disclosure in the administrative record of the specific criteria EPA and other federal agencies participating in the interagency USGCRP/CCSP imposed itself/themselves or via third-party-hired contractors in reviewing the expertise and eligibility of selected individual peer reviewers, peer review panels and/or members of specially formed federal advisory committees is likely to contribute to public understanding of the sanctity of the peer review processes actually utilized and the quality of the climate science produced therefrom upon which the Administrator primarily and heavily relied.

In addition, for example, only EPA disclosure to the public in the administrative record of the full and summary versions of the peer review panel reports relating to each USGCRP/CCSP SAP “core reference document” containing detailed comments from individual peer reviewers, the peer review panel as a whole, author and agency responses to such comments, public comments to draft SAPs, and agency responses thereto, is likely to contribute to public understanding of the sanctity of the peer review process actually utilized to vet such assessments, the role served by public participation in that process, and consequently, the quality of the climate science produced therefrom.

Furthermore, for example, only EPA public disclosure in the administrative record of the method(s) EPA had employed with respect to EPA-developed HISAs to ensure the validity of its certification to USGCRP/CCSP of compliance with relevant IQA and OMB and EPA IQA-implementing guidelines is likely to contribute to public understanding of the sanctity of the peer review process EPA actually utilized to vet such assessments, and consequently, the quality of the climate science produced therefrom upon which the Administrator’s findings had primarily and heavily relied.

Similarly, for example, only EPA disclosure to the public in the administrative record of how EPA verified that the method(s) other federal agencies (e.g., DOC-NOAA, DOI-USGS, etc.) had employed (in connection with HISAs they had developed) to ensure the validity of their certifications to USGCRP/CCSP of compliance with relevant IQA and OMB and EPA IQA-implementing guidelines is likely to contribute to public understanding concerning whether the peer review process(es) these other federal agencies had utilized to vet such assessments, actually functioned in practice as they had been designed to function. Consequently, only such disclosure is likely to contribute to public understanding regarding whether the climate science produced therefrom upon which the EPA Administrator had primarily and heavily relied was reliable and credible.

Moreover, for example, only EPA’s public disclosure of its confirmation of the legal validity of other federal agencies’ USGCRP/CCSP certifications is likely to contribute to public understanding of the quality, integrity and reliability of the peer review processes that EPA and other federal agencies had employed to verify whether IPCC peer review processes surrounding the development of the 3rd and 4th IPCC Assessment Reports (“ARs”) had actually functioned in practice as they had been designed, and whether they also conformed to and complied with the highest and most rigorous level IQA and OMB and EPA (and other federal agency) IQA-implementing guidelines applicable to HISAs. Only EPA and other federal agency disclosure to the public of confirmation of IPCC

compliance with such U.S. laws and procedures is likely to contribute to the public's understanding of how these essential government operations and activities had served to ensure the validity of the IPCC's 3rd and 4th AR findings produced therefrom upon which the EPA Administrator's CAA Section 202(a) findings had heavily and primarily relied.

If EPA is to have credibility among a broad public audience insofar as its definition of the term 'air pollution' in CAA Section 202(a) is concerned, then EPA must comprehensively disclose to the public information about the processes that it and other federal agencies had utilized to peer review the climate science bolstering the Administrator's conclusion that such term refers to "the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)".¹⁷ If EPA is to have credibility among a broad public audience concerning its determination that "the body of scientific evidence [consisting of]...[t]he major assessments by the [USGCRP], [IPCC], and the [NRC] compellingly supports this finding", it will need to comprehensively disclose to the public detailed information about the peer review processes that all such third parties had utilized to develop such scientific evidence, including all scientific and statistical data and modeling information and the testing thereof. Only EPA's disclosure of such operations and activities is likely to contribute to public understanding of these EPA determinations.

Only EPA's comprehensive disclosure to the public of information about the peer review processes and related procedures actually utilized by EPA, other federal agencies, and the IPCC to vet the climate-related science underlying each organization's findings upon which the Administrator's CAA Section 202(a) GHG findings rely, is likely to contribute to public understanding of the following matters: a) the causal vs. correlative relationships existing between 1) each of the six GHGs noted above which the Administrator's findings had identified, 2) human-induced climate change, and 3) the observed and projected individual and collective effects of such GHGs on public health and welfare in the United States;¹⁸ b) "the risks associated with changes in air quality, increases in temperatures, changes in extreme weather events, increases in food- and water-borne pathogens, and changes in aeroallergens" deemed attributable to "human-induced...elevated concentrations of the well-mixed greenhouse gases", both within the United States and beyond;¹⁹ and c) "public health and welfare impacts within the United States...[and]...in other world regions", that convinced EPA that "impacts in other world regions can in turn adversely affect the United States",²⁰ upon which those Administrator findings rely. And, only public disclosure by EPA of such information is likely to contribute to eventual public understanding of why the Administrator's findings resulted in EPA's issuance of economically significant mobile and stationary source GHG emissions control regulations.

As the administrative record also reflects, EPA appears to have dismissed stakeholders' carefully defined statutory right and interest to have been provided an adequate opportunity, in appropriately focused proceedings (distinct from Administrative Procedure Act notice and comments proceedings), if necessary, to secure EPA disclosure and correction of the publicly disseminated scientific bases underlying the EPA-TSD accompanying the Administrator's CAA Section 202(a) GHG findings. These scientific bases included all EPA-TSD "core reference documents" and other assessment literature supporting them.²¹ In relation thereto, EPA appears to have concluded, in responding to stakeholders' Requests for Correction ("RFCs"), that it also needn't have "obtain[ed]

and publicize[d] the data underlying all the [USGCRP, IPCC, and NRC] assessments on which they rel[ied]...as the primary scientific and technical basis of [the] endangerment decision”²² due to its ‘legitimate’ concern regarding the copyright restrictions to which such literature had been subject.²³ Only EPA’s disclosure of the legal grounds supporting its denial to stakeholders of an adequate and appropriately focused administrative scientific data quality review mechanism to respond to their RFCs, is likely to contribute to public understanding of EPA’s proper implementation of climate science-related peer review procedures in compliance with the IQA and OMB and EPA IQA-implementing guidelines. And, only EPA’s disclosure and rendering accessible to the public the scientific literature supporting the EPA-TSD “core reference documents” is likely to contribute to public understanding of the climate science upon which the Administrator’s CAA Section 202(a) findings are based – i.e., that elevated emissions of the six human-induced GHGs pose potential hazards that will endanger public health and welfare.

Regrettably, such information and data are not currently publicly available in an understandable form at a single readily accessible source or location. As a result, a broad public audience continues to harbor considerable doubts about the rigor of the agency’s climate science-related peer review operations and activities and the credibility of the climate science developed as a byproduct of such operations and activities. Absent EPA’s comprehensive disclosure of the records requested in ITSSD’s FOIA Request Clarification, the only publicly available information that is likely to contribute to public understanding of EPA climate science-related peer review operations and activities are a series of well-articulated EPA Office of Research and Development and Office of Inspector General reports.

Section B.2 of the Addendum accompanying ITSSD’s FOIA Request Clarification discusses the findings of a series of EPA-ORD and EPA-OIG reports citing various difficulties EPA had experienced in performing a number of climate science development and review functions. EPA has not endeavored to disclose these reports to the public even though they would contribute to public understanding of important government operations and activities, and thereby demonstrate EPA’s commitment to greater public transparency.

EPA should be concerned that, absent disclosure of the information requested, these reports will serve to define for the public EPA’s prior inability to: 1) garner the resources to fully address the data and research needs for public health protection;²⁴ 2) secure the variety of research products, technical information, or tools on climate change impacts, adaptation, and mitigation needed to define a national climate change strategy;²⁵ 3) focus its limited climate science budget resources on much other than national, interagency, and international programs;²⁶ 4) ensure that its controls for internal and external peer reviews are tested and actually satisfied to preserve scientific integrity;²⁷ 5) improve its external peer review process of populating and managing expert panels formed to review major scientific assessments pursuant to interagency contracts;²⁸ 6) effectively harness its limited legal authority on climate and energy matters;²⁹ and 7) ensure that its peer review methodology satisfied IQA statutory and administrative requirements for HISAs.³⁰

Indeed, a more recent EPA-OIG report further confirms the inadequacy of EPA’s ongoing climate science capabilities. It reveals that, due to EPA’s lack of progress in implementing the President’s scientific integrity policies which incorporate and build on the statutory and administrative

requirements imposed by the IQA and OMB and EPA IQA-implementing guidelines, the agency was “less equipped to: Provide leadership for the agency on scientific integrity[;] Promote agency compliance with the Scientific Integrity Policy[;] Keep the agency’s senior leadership informed on and involved with the agency[-]wide status of scientific integrity[; and] Detect violations of scientific integrity.”³¹

Section B.2 of the Addendum accompanying ITSSD’s FOIA Request Clarification also discusses how EPA’s peer review processes and procedures had evolved in concept only after the Administrator had issued final positive GHG endangerment and cause or contribute findings. These changes were an apparent response to both the EPA-OIG investigatory reports noted above and the President’s and White House Office of Science and Technology Policy’s recent high profile science integrity initiatives. And, the Addendum emphasizes how the President’s memorandum and OSTP’s implementing guidelines state rather clearly that “[s]uccessful application of science in public policy depends on *the integrity of the scientific process both to ensure the validity of the information itself and to engender public trust in Government*” (emphasis added).³²

Significantly, the U.S. House of Representatives Committee on Science, Space and Technology quoting this language in the charter to its March 31, 2011 hearing entitled, “Climate Change: Examining the Processes Used to Create Science and Policy.”³³ In reproducing this language, the Committee, clearly, emphasized how it considered science “generated through processes and procedures that are universally accepted” as a hallmark of sound regulatory “policies grounded in science”.³⁴ Regrettably, the publicly available administrative record reflects that EPA did not have these policies, processes and procedures in place at the time the Administrator had reached positive CAA Section 202(a) findings.

In sum, the records ITSSD has requested, once disclosed, will be “meaningfully informative about government operations or activities”,³⁵ namely, the carefully defined multilayered process of scientific peer review to which EPA was obliged to strictly adhere in order to ensure the quality, integrity and reliability of the EPA and third-party-generated climate science-related HISAs. Since the requested records are *not* “already in the public domain, in either a duplicative or a substantially identical form,” EPA’s disclosure of them would add much new information to the public’s understanding of key government operations or activities.³⁶ Consequently, “the disclosure of such information is “likely to contribute to an increased public’s understanding of those operations and activities.”³⁷

Thus, EPA should find that ITSSD’s FOIA Request Clarification (recently consolidated under case file EPA-HQ-2014-004938) satisfies factor 2 of the six-factor fee waiver test.

Factor 3: Disclosure of the Requested Information Will Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject as Opposed to the Individual Understanding of the Requester (40 C.F.R. §2.107(l)(2)(iii))

Disclosure of the records ITSSD requested, as described in ITSSD’s FOIA Request Clarification, “will contribute to the understanding of a reasonably broad audience interested in the subject”, within the meaning of 40 C.F.R. §2.107(l)(2)(iii).³⁸

The subject of the requested records concerns the government-mandated peer review process pursuant to which EPA ensured the quality, integrity and reliability of EPA, DOC-NOAA and other third-party science underlying EPA, DOC-NOAA, other federal agency and other third party-generated climate science-related highly influential scientific assessments (“HISAs”) that EPA embraced and disseminated to the public as its own. The EPA Administrator relied upon this well-defined statutory and administrative process and the HISAs developed in alleged compliance with it as the primary basis in reaching positive GHG endangerment and cause or contribute findings and subsequently promulgating economically significant national mobile and stationary source GHG emissions control regulations.

The requested records, once disclosed, are likely to substantiate how EPA synthesized, interpreted and vetted EPA-generated and third party-generated climate science-related HISAs. Third-party-generated climate science-related HISAs, for these purposes, include those developed by other federal agencies, foreign governments and intergovernmental bodies, as described above. The EPA Administrator determined, in reliance on these HISAs, that six identified GHGs have adverse observed and projected effects on public health and welfare in the United States, which is of great interest to a reasonably broad public audience. In other words, disclosure of the records ITSSD requested will “contribute to a ‘public understanding’ of a reasonably broad audience of persons interested in the subject, as opposed to the understanding of the requester.”³⁹

Requester ITSSD has staff and Board of Advisors members who are integrally involved and possess expertise in scientific risk assessment and risk management, scientific peer review, and/or environment, health and safety regulatory science policy and law, including knowledge and experience relating to climate science and atmospheric pollution.

For example, several ITSSD staff and/or Board of Advisors members have: 1) submitted public testimony before Congress regarding the need for regulatory science transparency of the processes EPA uses in formulating regulations,⁴⁰ and the need to separating risk assessment, a primarily scientific undertaking, from risk management, a more policy-related undertaking;⁴¹ 2) submitted public comments to the Office of Management and Budget in response to a proposed risk assessment bulletin;⁴² 3) participated in public seminars discussing the potential impact of climate change on public health;⁴³ 4) authored books and articles setting forth metrics for evaluating scientific claims and the criteria for conducting scientific peer review and scientific assessments;⁴⁴ 5) served as editor-in-chief of several prestigious peer reviewed scientific journals;⁴⁵ and 6) evaluated the downstream legal impacts of the federal government potentially pursuing policy-based science in lieu of science-based policy in connection with ongoing EU-US transatlantic trade negotiations.⁴⁶

ITSSD, led by its staff and Board of Advisors members, are able and specifically intend to disseminate the requested information, once produced by EPA, to a broad public audience via: 1) their respective organizations, members and/or supporters; 2) policymakers at the local, state, federal and international levels who track and monitor the findings of intergovernmental climate science bodies and the potential impacts of elevated GHGs associated with human activities on public health and welfare in the United States and in other regions of the world; 3) members of the domestic and international academic and scientific communities; and 4) members of the news media who, in turn,

will disseminate the information more broadly to the general public. In addition, public dissemination of such information will be accomplished by such persons and entities via organizational internet and blog websites, peer review-published articles, conference symposia, civil society meetings and panel presentations, and by means of news media interviews, op-eds, and letters to the editor.

In *Carney v U.S. Dept. of Justice*,⁴⁷ the Second Circuit Court of Appeals found that a requester's dissemination of federal agency-disclosed information may satisfy factor 3 of the six-factor FOIA fee waiver test even if the public dissemination assumes the form of scholarly publications. According to the Court the dissemination of scholarly publications "often is of great benefit to the public at large", although it may "not reach a general audience", given "the important role of academe in our democracy...[especially where the] evidence in the administrative record [reflects]...that very little has been written regarding [the subject]."⁴⁸ The Court reasoned that scholarly publications, once disseminated, could potentially "enlighten[]" other interested scholars" who would then incorporate such publications in their own work and writings,⁴⁹ which in turn, would inure to the benefit of society at large. According to the Court, therefore, "[t]he relevant inquiry...is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject."⁵⁰

In the present case, ITSSD has the capability and intent to disseminate the requested records once disclosed, compiled, analyzed and explained to a reasonably broad audience consisting, in part, of academic scholars, policymakers, members of Congress, civil society organizations including trade associations, and individual members of society. Such dissemination will assume various forms, including scholarly publications. And, it will follow the approach ITSSD has employed to distribute information about U.S. and foreign government operations and activities obtained using *non*-FOIA-based research and development sources, which has a proven record of success. ITSSD (including its staff members and members of its Board of Advisors) will disseminate the requested records once disclosed, compiled, analyzed and explained via its globally recognized website and blogs, peer review publications, press releases, academic, industry, professional, governmental and civil society organization symposia and conferences, congressional briefings and testimony, and news media interviews, op-eds and letters-to-the-editor.

Based on the global response to ITSSD's prior dissemination activities, thus far, which is reflected in the "References"⁵¹ and "Testimonials"⁵² sections of the ITSSD website, ITSSD is certain that the Court in *Carney* is correct in its assessment. These sections of the ITSSD website contain the many references made by domestic and international governments, intergovernmental bodies, university & think-tank scholars, nongovernmental civil society organizations, and the media to ITSSD publications, presentations and interviews. These references reflect that a reasonably broad public audience understands the analyses and explanations of government operations and activities that ITSSD has compiled, analyzed, explained and disseminated. Finally, the ITSSD website contains a new section that will be devoted to compiling, analyzing, explaining and disseminating to a broad public audience, in an understandable and accessible form, the information ITSSD obtains from EPA in response to ITSSD's FOIA Requests since consolidated and further explained in ITSSD's FOIA Request Clarification.⁵³

Moreover, ITSSD, a globally recognized nonprofit organization, is capable of disseminating, and intends to disseminate, the requested information, once disclosed, compiled, analyzed and explained to a broad public audience via linkages (affiliations) it has established with other nonprofit civil society organizations,⁵⁴ including the international network established by the Atlas Economic Research Foundation (“Atlas”), of which the ITSSD has long been a member. Atlas is “a nonprofit organization connecting a global network of more than 400 free-market organizations in over 80 countries to the ideas and resources needed to advance the cause of liberty.”⁵⁵ The organizations that comprise the Atlas network have members throughout the U.S. and in other countries that are capable of compiling, analyzing, explaining and disseminating the requested information, once produced, to their members through their own websites, blogs, email lists, newsletters, symposia and media channels of distribution. ITSSD specifically intends to share this information with particular interested Atlas network member organizations and individuals which are capable of disseminating and intend to disseminate the requested information among a broad public audience.

Through all of the above mechanisms, ITSSD, as requester, has demonstrated that is capable of and specifically intends to compile, analyze, explain and disseminate the requested records, once disclosed by EPA, to the broadest possible public audience(s) in an understandable form. Such dissemination will improve public understanding of and appreciation for EPA’s climate science-related peer review practices and procedures, the agency- and third party-generated climate science reviewed by EPA and its underlying foundations, and the climate science bases for the Administrator’s GHG endangerment and cause or contribute findings. Consequently, by setting forth a concrete plan or specific intent for compiling, analyzing, explaining and disseminating the requested information, once disclosed by EPA, to the broadest possible public audience in a clear and understandable form, ITSSD has established its compliance with the third of six factors required to secure a fee waiver.⁵⁶

Therefore, EPA should find that ITSSD’s FOIA Request Clarification (recently consolidated under case file EPA-HQ-2014-004938) satisfies factor 3 of the six-factor fee waiver test.

Factor 4: Disclosure of the Requested Information is Likely to Contribute ‘Significantly’ to Public Understanding of Government Operations or Activities (40 C.F.R. §2.107(l)(2)(iv))

Disclosure of the records ITSSD requested will “contribute significantly to public understanding” of the peer review practices and procedures actually engaged in by EPA to ensure the quality, integrity and reliability of EPA and third-party developed climate science-related highly influential scientific assessments (“HISAs”). The EPA Administrator primarily relied upon such HISAs in reaching positive GHG endangerment and cause of contribute findings and promulgating economically significant national climate change regulations controlling mobile and stationary source GHG emissions. Disclosure of the requested records also will “contribute significantly to public understanding” of the scientific and statistical data and modeling information and the testing thereof that underlies each such climate science-related HISA.⁵⁷

To date, a broad public continues to be uncertain about the scientific evidence underlying the Administrator’s GHG endangerment and cause or contribute findings. In particular, a broad public

questions EPA representations regarding the causal links allegedly established between: 1) the observed elevated emissions of anthropogenic sources of each of the six ‘well-mixed’ GHGs the Administrator has identified as being present in the ambient air at unprecedented levels; 2) non-natural anthropogenic climate change; and 3) the projected impacts of these two factors on public health and welfare in the United States. The uncertainty surrounding the Administrator’s conclusions in this regard are compounded by the fact that such gases are currently being emitted in China at higher levels than in the United States,⁵⁸ and GHG emissions from all BRICS nations are projected to be significantly higher than those in the United States by 2050.⁵⁹

EPA’s website states that EPA received “a large number of commenters express[ing] doubt about the anthropogenic origins of the recent increase in CO₂.”⁶⁰ In response to said commentators, EPA stated that it had “re-examined the scientific literature, which finds that the anthropogenic emissions are the root cause of the increase in CO₂ concentrations over the past century”, and that, “[a]s stated in CCSP (2007) ‘[t]he cause of the recent increase in atmospheric CO₂ is confirmed beyond a reasonable doubt’”⁶¹. In addition, the Administrator’s final endangerment and cause or contribute findings state that,

“In this final action, the Administrator finds that the air pollution is the combined mix of six key directly-emitted, long-lived and well-mixed greenhouse gases (henceforth ‘well-mixed greenhouse gases’), *which together, constitute the root cause of human-induced climate change and the resulting impacts on public health and welfare*. These six greenhouse gases are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride” (emphasis added).⁶²

However, the DOC-NOAA-generated USGCRP/CCSP report (SAP2.2/CCSP(2007))⁶³ which serves as the source of such statement is not expressly listed as a “core reference document” in the EPA-TSD accompanying the Administrator’s endangerment and cause or contribute findings.⁶⁴ Instead, such report was indirectly incorporated by reference into another DOC-NOAA-developed USGCRP/CCSP report (commonly referred to as the second U.S. national climate assessment)⁶⁵ which the EPA-TSD expressly lists as a “core reference document”.⁶⁶ EPA has not made publicly available any information concerning either the source of this EPA publicly disseminated statement or the climate science underlying it. As a result, a broad public audience continues to harbor reasonable doubt about not only the veracity of EPA’s statement, but also the validity of the foundational climate science underlying it.

In addition, DOC-NOAA developed another report (SAP5.2/CCSP(2009))⁶⁷ devoted entirely to discussing how the many scientific uncertainties surrounding climate change may be addressed. After noting that “not all quantities are empirical,”⁶⁸ the report proceeds to describe two types of scientific uncertainty: “‘uncertainty about the value of empirical quantities’ and ‘uncertainty about model functional form’”.⁶⁹ According to the report, the IPCC deals with these two types of uncertainty, in part, by focusing on “*subjective probabilities*” (emphasis added).⁷⁰ “[T]wo key attributes that [IPCC] argue[s] are important in any judgment about climate change [are]: the amount of evidence available to support the judgment being made and the degree of consensus within the scientific community about that judgment.”⁷¹

Although the EPA-TSD does not expressly list the DOC-NOAA-developed SAP5.2/CCSP(2009) as a “core reference document” upon which the Administrator “primarily” and “heavily” relied, it nevertheless designates the DOC-NOAA-developed second national climate assessment which references it⁷² as such a document.⁷³ Significantly, the latter report cites the former report as support for the following statement:

“When it is considered necessary to express a range of possible outcomes and identify the likelihood of particular impacts, this report takes a plain-language approach to expressing the expert judgment of the author team based on the *best available evidence*. For example, an outcome termed ‘likely’ has at least a two-thirds chance of occurring; an outcome termed ‘very likely,’ at least a 90 percent chance.1” (emphasis added).⁷⁴

DOC-NOAA’s second national climate assessment notably referenced SAP5.2/CCSP(2009) in the *first* of its 569 footnotes. In addition, the quoted language above employs the term “best available evidence” rather than the term “best available science” or “best available scientific evidence”. This strongly suggests that the Administrator may not have complied with EPA’s highest and most rigorous level peer review, conflict-of-interest and transparency standards applicable to HISAs⁷⁵ and also may have relied largely on *other than* scientific evidence (non-scientific evidence) in reaching positive GHG endangerment and cause or contribute findings.⁷⁶ However, EPA has not disclosed this important information in any publicly available and accessible source or medium. As a result, a broad public audience has remained in a state of uncertainty and misunderstanding concerning the foundations of the climate science that such peer review process had produced which informed the Administrator’s positive CAA Section 202(a) findings. Indeed, EPA has yet to disclose to a broad public audience information capable of clarifying whether the climate science-related peer review process the agency had undertaken led to Administrator findings that were based on science-based policy rather than policy-based science.

Disclosing the peer review practices and procedures EPA actually had undertaken to ensure the quality, integrity and reliability of the scientific and statistical data and modeling information and the testing thereof that served as the foundation for the climate science evidence the Administrator relied upon will significantly improve the public’s understanding of these critical government operations and activities. In addition, it also will enhance public understanding of the ostensibly scientific relationship EPA has established between the anthropogenic sources of GHG emissions, non-natural climate change and their adverse effects on public health and welfare.

EPA has stated that its “mission is to protect human health and to safeguard the natural environment--air, water, and land--upon which life depends.”⁷⁷ EPA also has stated that it is,

“committed to identifying and responding to the challenges that a changing climate poses to human health and the environment. Scientific evidence demonstrates that the climate is changing in unprecedented ways. These changes can pose significant challenges to the EPA's ability to fulfill its mission. The EPA must therefore adapt to climate change if it is to continue fulfilling its statutory, regulatory and programmatic requirements, chief among these protection of human health and the environment.”⁷⁸

Disclosure of information demonstrating the peer review practices and procedures EPA actually employed to ensure the quality, integrity and reliability of agency and third party-generated climate science upon which the Administrator's findings had relied will significantly contribute to public understanding of how EPA evaluated science ultimately used in government decision-making in fulfillment of its statutory and administrative responsibilities and its important agency mission.

The public's uncertainties surrounding the scientific bases of the evidence underlying the Administrator's CAA Section 202(a) GHG findings are further exacerbated by the scientific uncertainties endemic to current climate science that are discussed in the Administrator's final endangerment findings. These uncertainties, some of which are significant, include those relating to: 1) "the current magnitude of black carbon's climate forcing effect";⁷⁹ 2) "temperature records prior to 1600 A.D.";⁸⁰ 3) the "inherent uncertainty in the direction, magnitude, and/or rate of certain future climate change impacts";⁸¹ 4) "the potential indirect effects on public health associated with changes due to increases in UV-B radiation exposure, such as UV-B radiation-related skin cancers, that may be associated with reductions in ambient levels of ground level [ozone]" attributable to continued anthropogenic emissions of the six identified GHGs;⁸² 5) "the actual magnitude of any overall benefit...[of] increased temperature and increased carbon dioxide levels" and "the combined effects of elevated carbon dioxide and climate change on pests, weeds, and disease";⁸³ 6) "how human-induced climate change may affect the intensity and frequency of extreme weather events such as droughts and heavy storms";⁸⁴ the "response to carbon dioxide...of the many horticultural crops (e.g., tomatoes, onions, fruits), which make up roughly 40 percent of total crop value in the United States";⁸⁵ 7) "the adverse impacts of climate change on irrigation water requirements";⁸⁶ and 8) whether benefits of increased yields for certain crops will be outweighed by the "adverse impacts of climate change on crop yield, such as the increasing risk of extreme weather events".⁸⁷

Due to all of these uncertainties, a broad public lacks confidence in the Administrator's GHG endangerment and cause or contribute findings and an informed understanding of the foundational science that underlies it, and is unable to fully assess the health and environmental risks and benefits engendered by the economic activities in which society continues to engage. Granted, EPA has posted many documents to an agency website that endeavors to catalogue the bases for the Administrator's Clean Air Act Section 202(a)(2) findings.⁸⁸ However, such website does not provide publicly available and accessible information demonstrating the nature and extent of any causal or correlative relationships that EPA established between elevated emissions of anthropogenic sources of specifically identified GHGs, non-natural climate change, and the adverse impact of such emissions and climate change on public health and welfare. Nor does the website provide any access to the climate science literature underlying the Administrator's findings.

In addition, no single EPA or other website known to this Requester provides publicly available and accessible information dedicated to explaining the peer review practices EPA had actually employed to carefully vet both the third party-generated science reports and assessments that informed EPA climate policy and rulemaking, and the peer review, conflict-of-interest and transparency policies actually practiced by such organizations in developing that climate science information, consistent with highest and most rigorous level IQA and IQA and EPA IQA-implementing standards applicable to HISAs. The disclosure of this information, as emphasized both above and in the ITSSD FOIA

Request Clarification, is vital, if not, indispensable to promoting public confidence in EPA's ability to ensure the integrity of the science that undergirds other agency operations and activities, especially economically significant national rulemakings.

Given the current absence of this information, once EPA discloses it, a broader public audience is likely to have a much deeper understanding of and appreciation for these government operations and activities than would have been possible had such disclosure not occurred at all. In other words, the "public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, will be enhanced by the disclosure to a significant extent."⁸⁹

Thus, EPA should conclude that ITSSD's FOIA Request Clarification (recently consolidated under case file EPA-HQ-2014-004938) satisfies factor 4 of the six-factor fee waiver test.

Factor 5: The Requester Does Not Have a Commercial Interest That Would Be Furthered by the Requested Disclosure (40 C.F.R. § 2.107(l)(3)(i))

The Institute for Trade, Standards and Sustainable Development ("ITSSD") is a nonprofit organization does not have "commercial interest that would be furthered by the requested disclosure."⁹⁰ As Section V of ITSSD's previously filed EPA FOIA Requests stated,

"ITSSD does not seek to benefit commercially from this information. ITSSD is organized under Section 501(c)(3) of the Internal Revenue Code and is funded entirely by tax-deductible contributions from individuals, foundations and corporations. ITSSD neither seeks nor accepts financial support from government sources.

ITSSD's scholarly approach to international trade, environment, health and safety (EHS), and intellectual property and innovation policy research and analysis relevant to sustainable development has earned it a solid reputation in the public square and in governmental, intergovernmental, and academic venues."

ITSSD's interest in obtaining the requested records is purely to provide a public service. The public service to which ITSSD refers is that of significantly educating a broad public audience about the specific government operations or activities in which EPA had engaged to ensure the quality, integrity and reliability of the EPA- and third-party-generated climate science-related HISAs upon which the Administrator primarily relied in reaching positive endangerment and cause or contribute findings and promulgating economically significant national mobile and stationary source GHG emissions control regulations. These government operations or activities entail the particular agency peer review practices and procedures that EPA had actually utilized, free from outside group influence,⁹¹ consistent with the clearly defined multilayered statutory and administrative standards to which EPA remains subject.

As noted above, ITSSD's interest in securing EPA's disclosure of the requested records is to employ the professional capacities of ITSSD staff and Board of Advisors to inform and explain to a reasonably broad U.S. and foreign public audience how EPA analyzed and vetted the scientific and

statistical data and modeling information and the testing thereof underlying the EPA and third-party generated climate science-related HISAs that EPA “disseminated” to the public as the bases for EPA’s subsequent significant regulatory action(s). The public interest is herein engendered because such government operations and activities will directly and indirectly have economic and non-economic implications for all members of the American public, and they are entitled to know about them.

International scholars have concluded that freedom of information has become a human right which transcends any improper or unjust attempt by government to directly or indirectly quash the right of citizens to seek and impart information concerning governmental decisions.

“Freedom of information (FOI) is a human right. In order to make governments accountable, citizens have the right to know - the right of access to official documents...Freedom of information is recognized in international law. Article 19 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights provide that every person shall have the right to seek and impart information. There is growing recognition that the right to seek information includes a right of freedom of information.”⁹²

The comprehensive disclosure by EPA of the requested records will also serve a secondary noncommercial educational public interest. ITSSD intends to share its forthcoming compilation, analysis, explanation and dissemination of such records with U.S. and foreign nonprofit policy research and advocacy organizations that are fellow members of the nonprofit Atlas Economic Research Foundation’s global network. These entities are interested in learning about the laws and administrative procedures surrounding the U.S. FOIA and IQA, and in conveying such information to their public audiences to ensure that their governments become and/or remain more transparent. ITSSD is aware that such organizations and the public audiences they serve not only are interested in this subject matter generally, but also are interested in learning about the U.S. scientific peer review process, and specifically, about how that process ensured the quality, integrity and reliability of U.S. federal government climate science. In particular, ITSSD understands that knowledge of the U.S. FOIA and IQA law and procedure could significantly contribute to such organizations’ efforts to obtain, analyze and disseminate in their own countries government climate science-related records potentially obtainable under analogous FOIA statutes.

Indeed, since the credibility of the peer review process underlying regulatory science is an important element of regulatory transparency, EPA’s comprehensive disclosure of the records ITSSD requested can significantly contribute to improving public confidence in government climate science-related operations and activities, both here and abroad. Public confidence in government transparency initiatives is essential if governments are to successfully conclude politically ambitious trade agreements the primary goal of which is to achieve international regulatory cooperation,⁹³ especially where scientific information is shared among governments and can as easily serve as the basis for cross-border regulations as it can for purely domestic regulations. As one recent U.S. Government Accountability Office reveals,

“there is no bright line that separates international regulatory cooperation activities from regulatory programs. For example, U.S. agencies share scientific and technical information with their foreign counterparts, which can inform all stages of the rulemaking process. In addition, information sharing can help inform an agency’s decision on whether or not to regulate a product. When countries have differences in regulations in a particular area, there are opportunities to coordinate on the science underlying regulatory decisions in a particular area. EPA Office of Chemical Safety and Pollution Prevention (OCSPP) officials said that for chemical safety regulations, countries are working within different statutory and regulatory frameworks and different levels of acceptance of risk that can make it difficult to reach full agreement on a regulatory approach. In such cases, sharing information with foreign counterparts can facilitate agreement on a common understanding of the issue or on underlying technical or scientific issues. According to officials that we interviewed, OCSPP also focuses on transparency and good regulatory practices, which lead to commonality between policies, work sharing on scientific reviews, and greater harmonization in the long term” (emphasis added).⁹⁴

In other words, amid the current environment of international legal positivism and post-modernism where regulatory borders are increasingly viewed as permeable and malleable, there is a real likelihood that hazard-focused precautionary principle-driven policy-based-science rules prevalent in one negotiating jurisdiction will eventually pervade what was once the risk-focused empirical science-based policy framework of another negotiating jurisdiction.⁹⁵ Since governments have often been less than transparent concerning its planned treatment of such arcane and obscure subject matter, the question that remains is whether and if a broad public audience will ever learn about it absent compelled disclosure under FOIA.⁹⁶

It is well recognized that the intention of FOIA is to “ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”⁹⁷ And, since the U.S. FOIA was enacted in 1966, “many countries [have] [...] follow[ed] the FOIA model on access to government.”⁹⁸ As the nonprofit Privacy International reported in 2006,

“Forty years ago, US President Lyndon Johnson signed the Freedom of Information Act on Independence Day, stating ‘I signed this measure with a deep sense of pride that the United States is an open society in which the people’s right to know is cherished and guarded.’ The FOIA was not the first law of its kind but its adoption was nevertheless a milestone since following the US lead, many countries, first a trickle and then a flood, recognized the crucial importance of the principle and followed suit.”⁹⁹

According to said report,

“Nearly 70 countries around the world have now adopted comprehensive Freedom of Information Acts to facilitate access to records held by government bodies and another fifty have pending efforts. A few countries have issued decrees or used

constitutional provisions. Many countries have adopted other laws that can provide for limited access including data protection laws that allow individuals to access their own records held by government agencies and private organizations, specific statutes that give rights of access in certain areas such as health, environment, government procurement and consumer protection. Although FOI has been around for over 200 years, it is still evolving. Over half of the FOI laws have been adopted in just the last ten years.”¹⁰⁰

Given the relative lack of experience in many such countries regarding the proper administration of the FOIA laws there enacted, ITSSD intends also to use the ITSSD FOIA Request Clarification and this ITSSD FOIA Fee Waiver Clarification, in addition to ITSSD’s forthcoming compilation, analysis, explanation and dissemination of the requested records once disclosed by EPA as a unique teaching opportunity that will benefit international civil society and the public interest within those countries in which Atlas members are resident. The 2006 Privacy International report revealed that, while nearly all countries in Western Europe and the Americas¹⁰¹ had, at such time, adopted some form of FOIA law, “there ha[d] been more a modest adoption of [FOIA] laws...[i]n the Asia-Pacific region”,¹⁰² no adoption of such laws in the Middle East outside of Israel, and only the slow progress of such initiatives in Africa.¹⁰³ As a result, the Privacy International report concluded that,

“there is much work to be done to reach truly transparent government. The culture of secrecy remains strong in many countries. Many of the laws are not adequate and promote access in name only. In some countries, the laws lie dormant due to a failure to implement them properly or a lack of demand. In others, the exemptions and fees are abused by governments. Older laws need updating to reflect developments in society and technology. New laws promoting secrecy in the global war on terror have undercut access. International organizations have taken over the functions of national government but have not subjected themselves to the same rules.”¹⁰⁴

Regrettably, there is no reason to believe that the administration of FOIA laws around the world has progressed much since the release of said report. During 2010, for example, the nonprofit World Resources Institute (“WRI”) reported that, although “over 80 countries ha[d] enacted some form of FOIA, and the vast majority of these have been introduced in the past five or six years...there is still a lot that needs to be done to improve implementation of these laws. Our research has shown that practice lags behind.”¹⁰⁵

ITSSD’s compilation, analysis, explanation and dissemination of the requested records once disclosed by EPA, therefore, would serve the very useful purpose of continuing public awareness, both in the United States and beyond, about U.S. federal government transparency on very important all-encompassing environmental matters bearing serious economic, social, psychological and emotional implications for the U.S. public at large. For example, the United Nations Educational Scientific and Cultural Organization (“UNESCO”) found, in 2008, that “[during the last 15 years [i.e., since 1992], there has been increasing recognition that access to information on the environment is key to sustainable development and effective public participation in environmental governance.”¹⁰⁶ In support of its findings, UNESCO cited Principle 10 of the 1992 *Rio Declaration on Environment and Development*¹⁰⁷ and the European Union’s *Convention on Access to*

Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention).¹⁰⁸

Similarly, nonprofit WRI previously noted the importance of governments granting access to environmental information, including the scientific underpinnings supporting environmental decisionmaking:

“Making the right environmental choices - as consumers, voters and shareholders – depends on having access to accurate information on the issues that confront us every day, from the quality of the food we eat, to the impacts of corporate supply chains, to the voting records of parliamentarians. Much of this data is held by or can only be forced into the open by government.”¹⁰⁹

ITSSD seeks comprehensive EPA disclosure of the requested information to further ITSSD’s noncommercial public interest. ITSSD’s noncommercial public interest is to educate a reasonably broad public audience that includes *inter alia* fellow civil society network organizations in and beyond the United States about the quality, integrity and reliability of the foundations of EPA and other federal agency (e.g., DOC-NOAA) climate science research and observations that informed the EPA Administrator’s positive endangerment and cause or contribute findings and resulted in EPA’s issuance of economically significant national mobile and stationary source GHG emissions control regulations affecting all U.S. economic actors and citizens.

As Section V of ITSSD’s previously filed EPA FOIA Requests stated,

“ITSSD will not earn a profit from disclosure of the requested information. As discussed above, ITSSD will instead use the responsive records to expand the general public’s and Congress’ knowledge of and interest in EPA governmental operations and activities relating to climate science.”

ITSSD is not working on behalf of, and has neither been compensated for nor otherwise paid by, any private party to prepare its previously filed EPA FOIA Requests and this Request for Fee Waiver Request Clarification. ITSSD also will not be working on behalf of, and will be neither compensated nor otherwise paid by, any private party to compile, analyze, explain and disseminate to the public the requested EPA records once disclosed.

Just as with any other government policy-focused nonprofit nongovernmental organization operating in the public spotlight, including environmental protection and conservation-focused and public transparency-focused nonprofit organizations, however, it is entirely conceivable that ITSSD’s informed reporting of the requested records once disclosed by EPA could potentially indirectly further some ITSSD commercial, trade, or profit interests; but this is purely speculative and uncertain, and is highly unlikely at the present time.

Consequently, ITSSD, as Requester, has adequately demonstrated that it does not seek the requested information for a use or purpose that furthers [its] commercial, trade, or profit interests.¹¹⁰ Therefore

EPA should conclude that ITSSD's FOIA Request Clarification (recently consolidated under case file EPA-HQ-2014-004938) satisfies factor 5 of the of six-factor fee waiver test.

Factor 6: The Public Interest in Disclosure is Greater in Magnitude Than That of Any Identified Commercial Interest in Disclosure; Therefore, Disclosure of the Requested Information is Not “Primarily in the Commercial Interest of the Requester (40 C.F.R. § 2.107(l)(3)(ii))

As previously discussed, ITSSD is not working on behalf of, and has not been paid or otherwise compensated by, any private party in connection with its previously filed EPA FOIA Requests, its FOIA Request Clarification and this Fee Waiver Request Clarification. Nevertheless, it is possible, following disclosure of such records, that ITSSD could benefit to some extent, sometime in the future, in reputational terms, which could potentially indirectly enhance its longer term efforts to further develop programs related to its charitable mission.

The applicable EPA fee waiver regulations obviously contemplate that a requester could “put the records to a commercial use” once they have been disclosed by the agency.¹¹¹ However, such regulations also provide that a fee waiver is justified where the public interest standard [paragraph 40 C.F.R. §2.107(l)(1)(i)] is satisfied and the public interest is greater than any identified commercial interest in disclosure.”¹¹²

For this reason, Section V of ITSSD's previously filed EPA FOIA Requests stated that,

“Should, however, the disclosure of the requested information create a profit motive, it is ITSSD's position that this, by itself, does not run afoul of the commercial interest test. The “not primarily in the commercial interest” test is satisfied, provided the information requested is disseminated in the requestor's professional capacity and would further the public interest. For each of the foregoing reasons, this request qualifies as one that is not primarily in the commercial interest of ITSSD.”

This statement is supported by DC Circuit jurisprudence. In *Campbell v. U.S. Department of Justice*,¹¹³ the DC Federal Court of Appeals recognized the possibility that bona fide scholars may potentially profit from subsequent scholarly endeavors involving their use of records disclosed by a federal agency in response to a previously filed FOIA request. Citing prior circuit precedent,¹¹⁴ the Court ruled that such professional activities resulting in personal compensation did not rise to the level of an “overriding commercial interest” so as to convert an otherwise noncommercial dissemination of the requested records “to advance public understanding of government operations” which primarily benefited the general public into a “primarily commercial” use.¹¹⁵

“[T]he underlying purpose of the fee waiver provisions [is to] afford ‘special solicitude’ to scholars whose archival research advances public understanding of government operations...The fact that a bona fide scholar profits from his scholarly endeavors is insufficient to render his actions ‘primarily...commercial’ for purposes of calculating a fee waiver, as Congress did not intend for scholars (or journalists and public interest groups) to forego compensation when acting within the scope of their

professional roles. The quasi-commercial nature of Campbell's research was therefore irrelevant for purposes of calculating an appropriate fee waiver."¹¹⁶

Considering, in the abstract, that any requested records EPA would disclose could potentially be put to varied uses, ITSSD, as requester, has set forth in exhaustive detail above its purposes for securing such information.¹¹⁷ EPA's "comparison of the private and public benefits" that ITSSD may derive from its compilation, analysis, explanation and dissemination of such information in a clear and understandable manner to a reasonably broad public audience should entail "no more than a garden-variety 'weighing' inquiry."¹¹⁸

Under the present circumstances, ITSSD's described purposes for seeking EPA disclosure of the requested information reflect an overriding *noncommercial* interest. Since the extent of any ITSSD commercial interest that has been identified is *not* sufficiently great in magnitude in comparison with the public interest in disclosure, ITSSD has adequately shown that the disclosure of the requested records is "not primarily in the commercial interests of the requester."¹¹⁹ Therefore, EPA should conclude that ITSSD's FOIA Request Clarification (recently consolidated under case file EPA-HQ-2014-004938) satisfies factor 6 of the six-factor fee waiver test.

In sum, EPA should grant ITSSD's Fee Waiver Request Clarification because ITSSD has satisfactorily demonstrated, consistent with 40 C.F.R. §2.107(l)(1), that "(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and (ii) Disclosure of the information is not primarily in the commercial interest of the requester."¹²⁰

In the event, however, that EPA does not grant this Fee Waiver Request Clarification under FOIA and the applicable EPA FOIA regulations, ITSSD requests that EPA treat it as an "educational institution" contemplated by 5 USC Sec. 552(a)(4)(A)(ii)(II) and 40 CFR Sec. 2.107(b)(4),¹²¹ and as thus qualifying for the reduced fee structure applicable to such entities.¹²²

In addition, if EPA does not grant this Fee Waiver Request Clarification, ITSSD respectfully requests that EPA, prior to undertaking any of the activities necessary to disclose the records requested, provide notice to ITSSD of the actual or estimated amount of the fees to be charged therefor,¹²³ and secure ITSSD's advance approval of the anticipated total fee.¹²⁴

Once again, we appreciate the opportunity to further clarify for your offices the grounds for granting ITSSD a FOIA fee waiver as set forth in this Fee Waiver Request Clarification.

Thank you for your prompt attention to this matter.

Very truly yours,

Lawrence A. Kogan

Lawrence A. Kogan

CEO/President
ITSSD

Cc: Dana Hyland, EPA-HQ-OAR, Climate Change Division

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ENDNOTES

¹ In addition to filing a FOIA Request with EPA-HQ, ITSSD filed separate FOIA Requests with EPA Regions 2, 3, 4, 5, 6, 8, 9, and 10 designated as “EPA-R2”, “EPA-R3”, “EPA-R4”, “EPA-R5”, “EPA-R6”, “EPA-R8”, “EPA-R9” and “EPA-R10”.

² Representatives from the following EPA offices had so acknowledged receipt: EPA-HQ, EPA-R2, EPA-R3, EPA-R4, EPA-R5, EPA-R6, EPA-R8 and EPA-R10.

³ See Email Dated March 28, 2014 From Wanda Calderon, EPA Region 2 to Lawrence Kogan, ITSSD.

⁴ See Letter Correspondence Dated, April 1, 2014, From Dana Hyland, EPA Office of Air and Radiation to Lawrence Kogan, ITSSD.

⁵ See “ITSSD Freedom of Information Act (“FOIA”) Request for Science Files Influencing EPA Administrator’s Greenhouse Gas (“GHG”) Endangerment and Cause or Contribute Findings”, which EPA previously assigned the following file #: EPA-HQ-2014-004938; EPA-R3-2014-004862; EPA-R4-2014-005118; EPA-R5-2014-004881; EPA-R6-2014-005004; EPA-R8-2014-004910; EPA-R10-2014-004857.

⁶ See 132 Cong. Rec. S. 14298 (statement of Sen. Leahy).

⁷ See *Better Gov’t Ass’n v. Department of State*, 780 F.2d 86, 89 (D.C. Cir. 1986), quoting *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D.Mass.1984); SEN. COMM. ON THE JUDICIARY, AMENDING THE FOIA, S.REP. No. 854, 93rd Cong., 2d Sess. 11-12 (1974), U.S. Code Cong. & Admin. News 1974, p. 6267.

⁸ *Id.*

⁹ 780 F. 2d 86, 90.

¹⁰ See “ITSSD FOIA Request Clarification”, dated April 23, 2014, filed along with this “ITSSD FOIA Fee Waiver Request Clarification”.

¹¹ See Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, 114 Stat. 2763, 2763A-153-154 (2000), §515, codified at 44 U.S.C. § 3516 note.

¹² See Office of Management and Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies* (“OMB IQA Guidelines”) 67 FR 8452 (Feb. 22, 2002); OMB-PRB, *supra* (particularly, Preamble, pp. 23-26; Sections I-VII). “Section III requires a more rigorous form of peer review for highly influential scientific assessments...*If information is covered by Section III, an agency is required to adhere to the peer review procedures specified in Section III*” (emphasis added). *Id.*, at Preamble, p. 23.

¹³ See EPA IQA Guidelines, *supra*; EPA-PRH(2006), *supra*; EPA-PRH(2012), *supra* (especially revisions to Figures 1 and 3); EPA-PRP&M, *supra*. These guidelines provide that “all influential scientific and technical work products [ISI] used in decision making will be peer reviewed”. EPA-PRH(2006), *supra* at §2.2.1-2.2.2, 1.2.10. The EPA-PRP&M, which explains §4.2 of the EPA IQA Guidelines, explicitly states that ISI, including HISAs, as defined in § 1.5, I.7 of the OMB-PRB, “should be peer reviewed in accordance with the Agency’s Peer Review Handbook.” See EPA-PRP&M, *supra* at 1; EPA Office of the Science Advisor, Peer Review Program website (last visited March 31, 2014).

¹⁴ See Presidential Memorandum for the Heads of Executive Departments and Agencies, *Scientific Integrity*, The White House (March 9, 2009), at Section 1(c); Memorandum to the Heads of Executive Departments and Agencies, *Scientific Integrity*, Director of the Office of Science and Technology Policy (Dec. 17, 2010), at Section I, par. 2, pp. 1-2.

¹⁵ See U.S. Environmental Protection Agency, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by EPA* (2002), at Sec. 5.3 pp. 15-16, Sec. 5.5, p. 18.

¹⁶ See 40 CFR Part 2.107(l)(2)(i), *supra* (explaining the first of four fee waiver requirements identified in EPA’s fee waiver regulation).

¹⁷ See Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act* 74 FR 66496-66497 (Dec. 15, 2009), *supra*. According to EPA, “[t]he Administrator has determined that the body of scientific evidence compellingly supports this finding”, and that such evidence consists of “[t]he major assessments by the [USGCRP], [IPCC], and the [NRC] [which] serve[d] as the primary scientific basis supporting the Administrator’s endangerment finding”. *Id.*

¹⁸ See OMB-IQA Guidelines, at Sec. III(3)(ii)(A)-(B).

¹⁹ See 74 FR 66496, 66510-66511, *supra*.

²⁰ *Id.*

²¹ See, e.g., United States Environmental Protection Agency Office of Inspector General, *Procedural Review of EPA's Greenhouse Gases Endangerment Finding Data Quality Processes*, Report No. 11-P-0702 (Sept. 26, 2011), at Executive Summary, and pp. 16-17.

²² See United States Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments, Volume 1: General Approach to the Science and Other Technical Issues* (April 17, 2009), *supra* at Response 1-62, p. 54, quoting *American Trucking Ass'n v. EPA*, 293 F.3d 355, 372 (D.C. Cir. 2002).

²³ *Id.*, at p. 55.

²⁴ See United States Environmental Protection Agency Board of Scientific Counselors, BOSC Subcommittee on Global Change Research, *Review of the Office of Research and Development's Global Change Research Program at the U.S. Environmental Protection Agency – Final Report* (March 27, 2006), at p. 28

²⁵ See United States Environmental Protection Agency Office of Inspector General, *EPA Needs a Comprehensive Research Plan and Policies to Fulfill its Emerging Climate Change Role*, Evaluation Report No. 09-P-0089 (Feb. 2, 2009), at Executive Summary; p. 10.

²⁶ *Id.*, at pp. 1-3, Appendix B: *Agency Preliminary Comments and OIG Evaluation*, at pp. 23, 27-28. See also United States Environmental Protection Agency Office of the Administrator Science Advisory Board, *Office of Research and Development (ORD) New Strategic Research Directions: A Joint Report of the Science Advisory Board (SAB) and ORD Board of Scientific Counselors (BOSC)* EPA-SAB-12-001 (Oct. 21, 2011) at pp. 10, 18; United States Environmental Protection Agency Office of Research and Development, *Office of Research and Development's (ORD) October 2006 Response to the Board of Scientific Counselors (BOSC) April 2006 Final Report that Reviews ORD's Global Change Research Program* (Oct. 17, 2006), at pp. 3-4; United States Environmental Protection Agency Office of Research and Development, Board of Scientific Counselors, BOSC Global Change Mid-Cycle Subcommittee, *Review of the Office of Research and Development's Global Change Research Program at the Environmental Protection Agency* (July 11, 2008), at p.3.

²⁷ See United States Environmental Protection Agency Office of Inspector General, *Office of Research and Development Should Increase Awareness of Scientific Integrity Policies*, Audit Report No.11-P-0386 (July 22, 2011), at Executive Summary, pp. 7-8, 11.

²⁸ See United States Environmental Protection Agency Office of Inspector General, *EPA Can Improve Its Process for Establishing Peer Review Panels*, Evaluation Report No. 09-P-0147 (April 29, 2009), at Executive Summary, p. 3-7.

²⁹ See United States Environmental Protection Agency Office of the Administrator Science Advisory Board, *Office of Research and Development (ORD) New Strategic Research Directions: A Joint Report of the Science Advisory Board (SAB) and ORD Board of Scientific Counselors (BOSC)* EPA-SAB-12-001 (Oct. 21, 2011), *supra* at p. 19.

³⁰ See United States Environmental Protection Agency Office of Inspector General, *Procedural Review of EPA's Greenhouse Gases Endangerment Finding Data Quality Processes*, Report No. 11-P-0702 (Sept. 26, 2011), at pp. 13-18, 20, 21, 24; United States Environmental Protection Agency Office of Policy, *EPA's Action Development Process: Guidance for EPA Staff on Developing Quality Actions* (Rev. March 2011), at pp. 25, 33.

³¹ See United States Environmental Protection Agency, Office of Inspector General, *Quick Reaction Report: EPA Must Take Steps to Implement Requirements of Its Scientific Integrity Policy* 13-P-0364 (August 28, 2013), at Executive Summary, pp. 5-7.

³² See Memorandum to the Heads of Executive Departments and Agencies, *Scientific Integrity*, Director of the Office of Science and Technology Policy (Dec. 17, 2010), at pp. 1-2.

³³ See "Climate Change: Examining the Processes Used to Create Science and Policy," Hearing Before the Committee on Science, Space and Technology, U.S. House of Representatives, 112th Cong., 1st Sess., Rept. 112-09 (March 30, 2011), available at: <http://www.gpo.gov/fdsys/pkg/CHRG-112hrg65306/pdf/CHRG-112hrg65306.pdf>.

³⁴ "According to Presidential Science Advisor John Holdren, 'Successful application of science in public policy depends on the integrity of the scientific process both to ensure the validity of the information itself and to engender public trust in Government.' [fn] Likewise, government rulemaking is subject to a process to provide regularity and predictability to agency decision making. Several laws, such as the Administrative Procedure Act, are applicable with both formal and informal rulemaking. [fn] The potentially monumental impact of climate change policy on the U.S. economy and nearly all aspects of daily life demand that not only are such policies grounded in science, but that the science itself is generated through processes and procedures that are universally accepted" (emphasis added). See U.S. House of Representatives, Committee on Science, Space and Technology, *Hearing Charter: Climate Change: Examining the Processes Used to*

Create Science and Policy (March 31, 2011), at pp. 1-2, available at: <http://science.house.gov/sites/republicans.science.house.gov/files/documents/hearings/FINAL%20Climate%20Process%20Hearing%20Charter.pdf>.

³⁵ See 40 C.F.R. § 2.107(l)(2)(ii).

³⁶ *Id.*

³⁷ *Id.*

³⁸ See 40 C.F.R. § 2.107(l)(2)(iii).

³⁹ *Id.*

⁴⁰ See “The Need for Regulatory Science Transparency at the EPA”, Statement of A. Alan Moghissi, PhD, President, Institute for Regulatory Science, *Fostering Quality Science at EPA: Perspectives on Common Sense Reform* (Part I and Part II), Hearing Before the Committee on Science, Space, and Technology, Subcommittee on Energy and Environment, U.S. House of Representatives 112th Cong. (1st and 2nd Sessions) (Nov. 30, 2011), available at: https://science.house.gov/sites/republicans.science.house.gov/files/documents/hearings/113011_Moghissi.pdf. See also A. Alan Moghissi, Dennis K. McBride, Roger R. Stough, and Michael S. Swetnam, *Regulatory Sunshine: Application of Best Available Science Concept and Metrics for Evaluation of Science Claims to Regulatory Transparency*, International Center for Regulatory Science, George Mason University and Potomac Institute for Policy Studies (2012), available at: http://www.nars.org/Documents/Regulatory_Sunshine.pdf; A. Alan Moghissi and Misti Ault Anderson, *Independent Peer Review of Regulatory Science Information*, Institute for Regulatory Science (June 2011), available at: <http://www.nars.org/Documents/Reg-Sci-Peer-Review-ManualFINAL.doc>; Institute for Regulatory Science, *Manual for Independent Peer Reviews and Independent Scientific Assessments* (2009), available at: <http://www.nars.org/Documents/RSI-MTAPR.doc>.

⁴¹ See “Written Testimony of Gary E. Marchant, J.D., M.P.P., Ph.D, Lincoln Professor of Emerging Technologies, Law & Ethics Faculty Director, Center for Law, Science & Innovation, Sandra Day O’ Connor College of Law, Arizona State University, Tempe, AZ,” at *Fostering Quality Science at EPA: Perspectives on Common Sense Reform*, Hearing Before the Committee of Science, Space and Technology, Subcommittee on Energy and Environment, U.S. House of Representatives, 112th Cong. (Nov. 30, 2011), available at: https://science.house.gov/sites/republicans.science.house.gov/files/documents/hearings/113011_Marchant.pdf.

⁴² See Risk Analysis Center (Institute for Regulatory Science and Potomac Institute for Policy Studies), *Response of the Risk Analysis Center to the Office of Management and Budget’s Proposed Risk Assessment Bulletin* (2006), available at: http://www.whitehouse.gov/sites/default/files/omb/inforeg/comments_rab/rac.pdf.

⁴³ See Potomac Institute for Policy Studies, *Climate Change and Human Health: Prospects for the Future*, CREST Bold Ideas Seminar, Introduction by Dennis K. McBride, (Sept. 13, 2013), available at: <http://www.potomacinstitute.org/bold-ideas-seminar-series/2661-crest-bold-ideas-seminar-climate-change-and-human-health-prospects-for-the-future.html> and <http://www.potomacinstitute.org/attachments/article/2661/Colwell24Feb2014.pdf>.

⁴⁴ See, e.g., A. Alan Moghissi, Michael Swetnam, Betty R. Love and Sorin R. Straja, *Best Available Science: Fundamental Metrics for Evaluation of Scientific Claims*, Potomac Institute Press (2010), available at: <http://www.amazon.com/Best-Available-Science-Fundamental-Evaluation/dp/0615298192>; A. Alan Moghissi, Betty R. Love and Sorin R. Straja, *Peer Review and Scientific Assessment: A Handbook for Funding Organizations, Regulatory Agencies and Editors*, Institute for Regulatory Science (2013), available at: <http://www.amazon.com/Peer-Review-Scientific-Assessment-Organizations/dp/148205888X>; Alan Moghissi, PhD, Michael S. Swetnam, Matthew Amin and Conner McNulty, *Ruckelshaus Effect*, Synesis: A Journal of Science, Technology, Ethics & Policy (Potomac Institute Press 2012), available at: http://www.synesisjournal.com/vol3_g/2012_Moghissi_G6-13_abstract.html and http://www.synesisjournal.com/vol3_g/Moghissi_2012_G6-13.pdf.

⁴⁵ Dr. Alan Moghissi, a longstanding member of the ITSSD Board of Advisors, previously served as Editor-in-Chief of *Environment International* and *Waste Management* (journals of Elsevier Publ.), and of *Technology – Elmsford – Journal of the Franklin Institute*, then *Technology: A Journal of Science Serving Legislative Regulatory and Judicial Systems*.

⁴⁶ See Lucas Bergkamp and Lawrence Kogan, *Trade, the Precautionary Principle, and Post-Modern Regulatory Process: Regulatory Convergence in the Transatlantic Trade and Investment Partnership*, European Journal of Risk Regulation (4/2013) (SSRN), available at: http://www.lexxion.de/pdf/ejrr/12-16-12.04.438_ejrr_2013_04.pdf010.pdf. See also Evergreen Magazine, *The EPA Has a Political Agenda that Doesn’t Have Much of Anything To Do With Science - A Conversation with Dr. Alan Moghissi, One of America’s Finest and Most Outspoken Scientists*, Evergreen Foundation (Fall 2012) at pp. 5-13, available at: http://www.esipri.org/Library/Evergreen_2012.pdf.

⁴⁷ See *Carney v U.S. Dept. of Justice*, 19 F.3d 807, 815 (2nd Cir. 1994). From the information he submitted to the DOJ, we are satisfied that Carney will disseminate the disclosed records to a sufficiently broad audience of students and academics interested in his work. There is evidence in the administrative record that very little has been written regarding the role of DOJ in the selection process, and the DOJ does not dispute this. Thus, we are satisfied that Carney's work is likely to be considered by other scholars." *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* "DOJ suggests that, because Carney's dissertation and proposed articles and book on the role of the DOJ in the judicial selection process are scholarly in nature, they will not reach a general audience and hence will not benefit the public at large. Such work by its nature usually will not reach a general audience, but, by enlightening interested scholars, it often is of great benefit to the public at large. To suggest otherwise is to ignore the important role of academe in our democracy. The relevant inquiry, as we see it, is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject." *Id.*

⁵¹ *Id.*, at: <http://www.itssd.org/references.html>.

⁵² *Id.*, at: <http://www.itssd.org/testimonials.html>.

⁵³ See Institute for Trade, Standards and Sustainable Development, *ITSSD Programs - Theme #4 International Regulatory Transparency*, ITSSD website, available at: <http://www.itssd.org/programs---itssd-theme--4.html>.

⁵⁴ *Id.*, at: <http://www.itssd.org/links.html>.

⁵⁵ See Atlas Economic Research Foundation website, *Home Page* (last referenced March 31, 2014), at: <http://atlasnetwork.org/>.

⁵⁶ See *Judicial Watch, Inc. v. U.S. DOI*, 122 F. Supp. 2d 5, 10 (D.D.C. 2000).

⁵⁷ See 40 C.F.R. §2.107(l)(2)(iv).

⁵⁸ See Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act* 74 FR 66496, 66516, 66499, 66539 (Dec. 15, 2009).

⁵⁹ See Virginie Marchal, Rob Dellink, Detlef van Vuuren, Christa Clapp, Jean Chateau, Eliza Lanzi, Bertrand Magné and Jasper van Vliet, *OECD Environmental Outlook to 2050 – Chapter 3: Climate Change* (Nov. 2011 Pre-Release Version), at pp. 10-15, available at: <http://www.oecd.org/env/cc/49082173.pdf>.

⁶⁰ See United States Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act EPA's Response to Public Comments, Volume 2: Validity of Observed and Measured Data, at Response 2-2*, EPA website (last visited March 31, 2014), at: <http://www.epa.gov/climatechange/endangerment/comments/volume2.html>.

⁶¹ *Id.*

⁶² 74 FR 66496, 66516.

⁶³ See U.S. Climate Change Science Program, *Synthesis and Assessment Product 2.2 - The First State of the Carbon Cycle Report (SOCCR) The North American Carbon Budget and Implications for the Global Carbon Cycle* (Nov. 2007) (CCSP 2007) (Anthony W. King, Lisa Dilling, Gregory P. Zimmerman, David M. Fairman, Richard A. Houghton, Gregg Marland, Adam Z. Rose, and Thomas J. Wilbanks (eds.)), at p. 22, available at: <http://library.globalchange.gov/products/assessments/sap-2-2-the-north-american-carbon-budget-and-implications-for-the-global-carbon-cycle>.

⁶⁴ To recall, the significance of a "core reference document" lies in the "primary" and "heavy" reliance that the Administrator places upon it. See EPA-TSD, *supra* at pp. 6-7.

⁶⁵ See United States Global Change Research Program, *Global Climate Change Impacts in the United States* (Thomas R. Karl, Jerry M. Melillo, and Thomas C. Peterson (eds.)) (Cambridge Univ. Press 2009), *supra*.

⁶⁶ See EPA-TSD, *supra* at Table 1.1, p.7.

⁶⁷ See United States Global Research Program, *Best Practice Approaches for Characterizing, Communicating, and Incorporating Scientific Uncertainty in Climate Decision Making - Synthetic Assessment Product 5.2* (Jan. 2009), available at: <http://downloads.globalchange.gov/sap/sap5-2/sap5-2-final-report-all.pdf>.

⁶⁸ *Id.*, at p. 22.

⁶⁹ *Id.*

⁷⁰ "In a personalist or Bayesian framework, it is perfectly appropriate to say, based on a subjective interpretation of polling data, results from focus group discussions, and one's own reading of the political climate, 'I think there is an 80 percent chance that Jones will win the next congressional election in this district'. However, because it involves the

outcome of a single unique future event, such a statement has no meaning in a frequentist framework. In the face of large amounts of data on a repeating event, and a belief that the process being considered is stationary, the subjectivist probability should reduce to the same value as the classical probability... A number of researchers have applied these alternative formulations to the challenge of characterizing climate change uncertainty and there is no final consensus on the best approach. However, so long as one carefully specifies the question to be addressed, our judgment is that all four boxes in Figure 1.1 can be appropriately handled through the use of subjective probability, allowing a wide range or a multiple set of plausible distributions to represent the high levels of uncertainty, and retaining the axioms of probability.” *Id.*, at p. 20.

⁷¹ *Id.*, at pp. 20-21. SAP 5.2, furthermore states the following: “Subjective probabilities seem clearly appropriate for addressing the established cases across the top of this matrix [‘established but incomplete’ and ‘well established’]. There is more debate about the most appropriate methods for dealing with the others [i.e., the bottom of the matrix - ‘speculative’ and ‘competing explanations’]. A variety of approaches exist, such as belief functions, certainty factors, second order probabilities, and fuzzy sets and fuzzy logic, that attempt to quantify the degree of belief in a set of subjective probability judgments Each of these approaches provides an alternative calculus that relaxes the axioms of probability. In particular, they try to capture the idea that one can gain or lose confidence in one of a mutually exclusive set of events without necessarily gaining or losing confidence in the other events.” *Id.*, at p. 21.

⁷² See United States Global Change Research Program, *Global Climate Change Impacts in the United States* (Thomas R. Karl, Jerry M. Melillo, and Thomas C. Peterson (eds.)) (Cambridge Univ. Press 2009), *supra* at p8, fn1, p. 165.

⁷³ See EPA-TSD, *supra* at Table 1.1, p. 7.

⁷⁴ See United States Global Change Research Program, *Global Climate Change Impacts in the United States* (Thomas R. Karl, Jerry M. Melillo, and Thomas C. Peterson (eds.)) (Cambridge Univ. Press 2009), *supra* at p8 and fn1, citing “...1 CCSP, 2009: *Best Practice Approaches for Characterizing, Communicating, and Incorporating Scientific Uncertainty in Decisionmaking*. [Morgan, G., H. Dowlatabadi, M. Henrion, D. Keith, R. Lempert, S. McBrid, M. Small, and T. Wilbanks (eds.)]. Synthesis and Assessment Product 5.2. National Oceanic and Atmospheric Administration, Washington DC”. *Id.*, at p. 165.

⁷⁵ See EPA IQA Guidelines, *supra* at Sec. 6.4, pp. 22 and 26; EPA-PRH, *supra* at Appendix D - Examples Of Peer Review Charges, p. D-11. See also NOAA IQA Guidelines, *supra*, at Part II (“Some assessments of risk to humans and the environment, such as tornado or hurricane warnings, use best available science conducted in accordance with sound and objective scientific practices...”) *Id.*

⁷⁶ “1. To the degree that the agency action is based on science, NOAA will use (a) the best available science and supporting studies (including peer-reviewed science and supporting studies when available), conducted in accordance with sound and objective scientific practices, and (b) data collected by accepted methods or best available methods” (emphasis added). See NOAA IQA Guidelines, *supra*, at Part II.

⁷⁷ See United States Environmental Protection Agency, *EPA’s Region 6 Office - About Us*, EPA Region 6 website (last visited March 31, 2014), available at: <http://www.epa.gov/region6/water/aboutus.htm>.

⁷⁸ See United States Environmental Protection Agency, *U.S. Environmental Protection Agency Policy Statement on Climate-Change Adaptation* (June 2, 2011), available at: <http://www.epa.gov/climatechange/Downloads/impacts-adaptation/adaptation-statement.pdf>. The EPA has more recently stated that, “[s]cientific evidence demonstrates that the climate is changing at an increasingly rapid rate, outside the range to which society has adapted in the past. These changes can pose significant challenges to the EPA’s ability to fulfill its mission.” See United States Environmental Protection Agency Office of Water, *Draft Climate Change Adaptation Implementation Plan* (Sept. 2013), at Preface, available at: <http://epa.gov/climatechange/Downloads/impacts-adaptation/office-of-water-plan.pdf>.

⁷⁹ 74 FR 66496, 66518, fn 24.

⁸⁰ *Id.*, at 66523.

⁸¹ *Id.*, at 66524.

⁸² *Id.*, at 66528.

⁸³ *Id.*, at 66531.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*, at 66535.

⁸⁸ See United States Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act* (last visited April 1, 2014), available at: <http://www.epa.gov/climatechange/endangerment/>.

⁸⁹ See 40 C.F.R. §2.107(l)(2)(iv), *supra*.

⁹⁰ See 40 C.F.R. §2.107(l)(3)(i), *supra*.

⁹¹ In *Forest Guardians v. DOI*, 416 F. 3d 1173, 1179-1180 (10th Cir. 2005), the Tenth Circuit Court of Appeals held that, “an understanding of how [a federal agency] makes policy decisions, including the influence of any outside groups on this process, is also important to the understanding of the [agency].”

⁹² See Gustav Björkstrand & Juha Mustonen, *Introduction: Anders Chydenius’ Legacy Today*, in “The World’s First Freedom of Information Act,” Anders Chydenius Foundation (2006), at p. 4, available at: http://www.access-info.org/documents/Access_Docs/Thinking/Get_Connected/worlds_first_foia.pdf.

⁹³ See Institute for Trade, Standards and Sustainable Development, *International Regulatory Cooperation*, ITSSD website, available at: <http://nebula.wsimg.com/374d8ac5bb729af7b75740edb1e11c98?AccessKeyId=39A2DC689E4CA87C906D&disposition=n=0&alloworigin=1>.

⁹⁴ See United States Government Accountability Office, *International Regulatory Cooperation: Agency Efforts Could Benefit from Increased Collaboration and Interagency Guidance*, Report to the Chairman, Committee on Oversight and Government Reform, House of Representatives (GAO-13-588) (Aug. 2013), at p. 18, available at: <http://www.gao.gov/assets/660/656488.pdf>. “All agencies in our study reported that they engage in a range of international regulatory cooperation activities. These activities include U.S. agencies and foreign counterparts sharing scientific data, developing and using the same international regulatory standards, and recognizing each other’s regulations as equivalent. Cooperation can address both existing and avoid future regulatory differences. These activities generally fall into six broad categories...Activity. Information sharing and scientific collaboration. Description. *Agencies share information with their foreign counterparts on scientific data and regulatory approaches*. Illustrative Examples. Pesticide Tolerance Crop Grouping Revisions Program • Chemical Data Information Sharing • Consumer Product Safety Pilot Alignment Initiative (emphasis added).” *Id.*, at Table 2, p. 10.

⁹⁵ See Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act* 74 FR 66496, 66506-66509 (Dec. 15, 2009), *supra*; Lawrence Kogan, “Revised U.S. Deep Seabed Mining Policy Reflects UNCLOS and Other International Environmental Law Obligations”, *Emerging Issues* (2013), 6893, available at: <http://nebula.wsimg.com/f97bfb87d31d68c9fba55f48d125fd8a?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

⁹⁶ See Lucas Bergkamp and Lawrence Kogan, *Trade, the Precautionary Principle, and Post-Modern Regulatory Process: Regulatory Convergence in the Transatlantic Trade and Investment Partnership*, *European Journal of Risk Regulation* (4/2013), *supra* at pp. 500, 504-507 See also Jean D’Aspremont, *Hart and Postmodern Positivism in International Law*, 113 *Revue générale de droit international public*, 635-654 (2009), at abstract, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1491493&download=yes; Stanford Encyclopedia of Philosophy, *Legal Positivism*, Center for the Study of Language and Information (Jan. 3, 2003) (last visited 4/25/14), available at: <http://plato.stanford.edu/entries/legal-positivism/>.

⁹⁷ See *NRDC v. United States EPA*, 581 F. Supp. 2d 491, 496 (S.D.N.Y. 2008) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)).

⁹⁸ See Gustav Björkstrand & Juha Mustonen, *Introduction: Anders Chydenius’ Legacy Today*, in “The World’s First Freedom of Information Act,” Anders Chydenius Foundation (2006), *supra* at p. 4.

⁹⁹ See David Banisar, *Freedom of Information Around the World: A Global Survey of Access to Government Information Laws, Privacy International* (2006), at Foreword, available at: http://www.freedominfo.org/documents/global_survey2006.pdf.

¹⁰⁰ *Id.*, at p. 6. “There has been a significant increase by nations in the recognition of the importance of access to information both as a human right and as an important right to promote good governance and fight corruption. At least 80 countries have adopted constitutional provisions that provide for a right of access. Nearly 70 countries around the world have adopted national laws on freedom of information and efforts are pending in around another fifty.” *Id.*, at p. 16.

¹⁰¹ See United Nations Educational Scientific and Cultural Organization (UNESCO), Communication and Information, *Freedom of Information in Latin America and the Caribbean*, UNESCO website (last visited April 4, 2014), available at: <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-latin-america-and-the-caribbean/>.

¹⁰² *Id.*, at p. 19. See also United Nations Educational Scientific and Cultural Organization (UNESCO), Communication and Information, *Freedom of Information in Asia-Pacific*, UNESCO website (last visited April 4, 2014), available at: <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-asia-pacific/>.

¹⁰³ *Id.*, at p. 20. See also United Nations Educational Scientific and Cultural Organization (UNESCO), Communication and Information, *Freedom of Information in Arab States*, UNESCO website (last visited April 4, 2014), available at: <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-arab-states/>; United Nations Educational Scientific and Cultural Organization (UNESCO), Communication and Information, *Freedom of Information in Africa*, UNESCO website (last visited April 4, 2014), available at: <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-africa/>.

¹⁰⁴ See David Banisar, *Freedom of Information Around the World: A Global Survey of Access to Government Information Laws*, Privacy International (2006), *supra* at p. 6.

¹⁰⁵ See Lalanath de Silva, *Freedom of Information Laws Spreading Around the World*, World Resources Institute Blog (Sept. 26, 2010), available at: <http://www.wri.org/blog/freedom-information-laws-spreading-around-world>.

¹⁰⁶ See Toby Mendel, *Freedom of Information: A Comparative Legal Survey*, United Nations Educational Scientific and Cultural Organization (UNESCO) (2008), at p. 16, available at: http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_information_en.pdf.

¹⁰⁷ “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes...” See UN Doc. A/Conf.151/26 (vol. 1).

¹⁰⁸ “Considering that, to be able to assert [the right to live in a clean environment] citizens must have access to information ... Recognizing that, in the field of environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns ...” See UN Doc. ECE/CEP/43, adopted at the Fourth Ministerial Conference in the “Environment for Europe” process, 25 June 1998, entered into force 30 October 2001. As of September 2007, there were 41 Parties to the Convention. The text of the Convention in various languages is available at: <http://www.unece.org/env/pp/treatytext.htm>.

¹⁰⁹ *Id.*

¹¹⁰ See 40 C.F.R. § 2.107(l)(3)(i), *supra*.

¹¹¹ See 40 C.F.R. § 2.107(l)(3)(ii); 40 C.F.R. § 2.107(b)(1).

¹¹² See 40 C.F.R. § 2.107(l)(3)(ii).

¹¹³ See *Campbell v. U.S. Department of Justice*, 164 F.3d 20 (DC Cir. 1998).

¹¹⁴ See *National Treasury Employees Union v. Griffin*, 811 F.2d 644 (D.C.Cir.1987).

¹¹⁵ See 164 F.3d 20, 36, quoting *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 649 (D.C.Cir.1987) (“The legislative history of the fee waiver provision indicates special solicitude for journalists, along with scholars and public interest groups. See S.Rep. No. 854, 93d Cong., 2d Sess. 3, 11 (1974); *Ettlinger v. FBI*, 596 F.Supp. at 872; Bonine, *Public-Interest Fee Waivers Under the Freedom of Information Act*, 1981 Duke L.J. 213, 238-44.”).

¹¹⁶ *Id.*

¹¹⁷ See *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 649 (D.C.Cir.1987) (“A union, however, may put information to such varied uses, many of which are wholly independent of informing the public, that the relation between public and private benefits is by no means constant. Accordingly, when there is a clear understanding of the requester's purposes, comparison of the private and public benefits is no more than a garden-variety “weighing” inquiry and is equally susceptible of resolution. Thus, to secure a finding of predominate public benefit, a requesting union must typically submit more detail than a journalist.”) *Id.*

¹¹⁸ *Id.*

¹¹⁹ See 40 C.F.R. § 2.107(l)(3)(ii), *supra*.

¹²⁰ See 40 C.F.R. §2.107(l)(1).

¹²¹ See also 40 CFR Sec. 2.107(c)(1)(ii) (identifying acceptable fees to be charged to educational institutions).

¹²² ITSSD is organized and operated *inter alia* to conduct and publish science law and policy-related research, analysis and commentary on various domestic and international environmental and trade issues. In fulfilling its charitable mission, ITSSD does not intend to promote any particular product or industry. Rather, it endeavors to provide a thorough, informed and balanced analysis of regulatory science, economic and law and policy issues and their impact on a broad public audience. The records requested pursuant to the ITSSD EPA FOIA Requests are integral to ongoing ITSSD research concerning the implementation of government (legislative, regulatory and judicial) transparency and accountability mechanisms related to science and science policy, the aim of which is to educate the public and Congress about the relationship between sustainable development and principles of good administrative governance. See Office of Management and Budget, *The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines*, 52 FR 10012, 10013-10014 (March 27, 1987), available at: http://www.whitehouse.gov/sites/default/files/omb/inforeg/foia_fee_schedule_1987.pdf. These guidelines advise federal agencies to evaluate requests on an individual basis and to consider whether requesters can demonstrate that: 1) the request is from an institution that is within the category; 2) the institution has a program of scholarly research; and 3) the documents sought are in furtherance of the institution's program of scholarly research and not for a commercial purpose. *Id.*, at 10014. ITSSD's scholarly approach examines ostensibly impartial, unbiased and objective scientific methodologies used as the basis for regulation to ascertain how they might affect free markets, property rights and the rule of law, considering both the costs and the benefits to the public of a cleaner and healthier environment. ITSSD has published a number of peer-reviewed analyses, including as book chapters, as articles appearing in law reviews, law journals, economic journals, policy journals and as panel presentation materials in domestic and international conferences, all of which are available online at the ITSSD website.

¹²³ See 40 C.F.R. §2.107(e).

¹²⁴ *Id.*