ITSSD
INSTITUTE FOR TRADE, STANDARDS, AND SUSTAINABLE DEVELOPMENT

March 14, 2014

Regional Freedom of Information Officer
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re: ITSSD Freedom of Information Act Request for Science Files Underlying EPA Administrator's Greenhouse Gas ("GHG") Endangerment and Cause or Contribute Findings

Dear Sir or Madam:

On behalf of the Institute for Trade, Standards and Sustainable Development ("ITSSD"), a globally recognized nonprofit research, analytics and educational institution based in the State of New Jersey which focuses, in part, on international and domestic environmental law and policy research and analysis in the public interest, it is hereby requested that the Environmental Protection Agency's Region 8 Offices ("EPA-R8") produce all of the records described on pages 7-11 *infra*, 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 CFR Part 2, Sec. 100 et seq.).

This FOIA request arises in the context of unique historical circumstances, namely, EPA Headquarters ("EPA-HQ")'s enactment of a series of economically significant national GHG emissions regulations based primarily upon reviews of reviews of third-party-prepared highly influential scientific assessments. Consequently, in addition to containing an introduction, an historical background, explanations of purpose and objective, and detailed subject matter descriptions of the records requested, this FOIA document also provides descriptive appendices detailing the relationships between EPA, third-parties and the specific groups of records sought. This document's format is intended foremost to assist agency FOIA officials in expeditiously locating and identifying such records.

I. Introduction

For purposes of this FOIA request, all references to "EPA-R8" include, but are not limited to, the EPA Region 8 (EPA-R8) correspondent offices/programs of the EPA Administrator ("the Administrator"), EPA's Science Advisory Board ("SAB"), EPA's Office of Research and Development ("ORD") (including its research program for Air, Climate, and Energy ("ACE") and its National Center for Environmental Assessment ("NCEA")), EPA's Office of Air and Radiation ("OAR"), EPA's Office of Water ("OW"), and all EPA-R8 office and program directors and associate directors, other officials and staff, including those who are no longer employed by the agency. In addition, EPA-R8 includes all EPA-R8 officials and staff who served on and/or liaised with EPA-HQ climate science-related advisory boards and federal advisory committees established, operating and/or terminated by EPA-R8 during the period spanning January 1, 2006 through December 31, 2011 ("2006-2011").

It is ITSSD's understanding and belief that, during said period, EPA established at least four (4) climate science-related advisory committees, three (3) of which have since been terminated, including the Human Impacts of Climate Change Advisory Committee (HICCAC) (established 2007 and terminated 2008), the Coastal Elevations and Sea Level Rise Advisory Committee (CESLAC) (established 2006 and terminated 2009), and the Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee ("ACSERAC") (established 2007 and terminated 2008). It also is ITSSD's understanding and belief that, two additional EPA-established climate science-related advisory committees, the Children's Health Protection Advisory Committee (CHPAC) (established 1997 and renewed 2011, 2013) and the Board of Scientific Councselors ("BOSC") (established 1996 and renewed 2008, 2010, 2012) for an additional period of two years), are ongoing.

II. Background to This Request

In *Massachusetts v. EPA*, the United States Supreme Court held that Congress had delegated to EPA, pursuant to Section 202(a) of the Clean Air Act (CAA) (42 U.S.C. § 7521(a)(1)), "the statutory authority to regulate the emission of…[GHGs] from new motor vehicles". In addition, the Supreme Court had held that the text of this statutory provision requires the Administrator, before exercising his/her authority, to form a 'judgment' "relate[d] to whether an air pollutant cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare".[1]

In the subsequent case of *Coalition for Responsible Regulation, Inc. ("CRR") v. EPA*, the DC Circuit Court of Appeals held that CAA § 202(a)(1) "requires EPA to answer only two questions: whether particular 'air pollution' [e.g.,] –greenhouse gases– 'may reasonably be anticipated to endanger public health or welfare,' and whether motor-vehicle emissions 'cause, or contribute to' that endangerment."[2] The DC Circuit Court also held that, "[t]hese questions require a *'scientific judgment'* about the potential risks greenhouse gas emissions pose to public health or welfare—not policy discussions. *Massachusetts v. EPA*, 549 U.S. at 534" (emphasis added).[3]

CRR v. EPA (and related cases consolidated by the DC Circuit Court of Appeals) had arisen, in part, as the result of the EPA Administrator's issuance of positive endangerment and cause or contribute findings,[4] notwithstanding EPA's prior alleged failure to adequately respond to public comments concerning, and to public stakeholder requests for explanation, clarification and necessary correction of the peer review-related science files containing EPA's scientific bases for and rationales underlying said findings.[5] This case also was triggered because, immediately after the Administrator

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[1] 549 U.S. 497 (2007) at 526-527. Said endangerment evaluation must "relate to whether an air pollutant 'cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.'" *Massachusetts v. EPA*, 549 U.S. at 532–33.

[2] 684 F.3d 102, 117 (DC Cir. 2012).

[3] *Id.*, at 117-118.

[4] *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 (Dec. 15, 2009).

[5] *See* 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); Environmental Protection Agency, *EPA's Response to the Petitions to*

had reached positive endangerment and cause or contribute findings, EPA Headquarters ("EPA-HQ") promulgated economically significant national GHG tailpipe emissions rules (May 2010)[6] and regulations governing GHG emissions from stationary source facilities under CAA Titles I and V (April and June 2010, respectively).[7] In addition, the Administrator rejected, thereafter, stakeholders' petitions to reconsider the endangerment and cause or contribute findings (August 2010),[8] notwithstanding public stakeholder claims that EPA allegedly had failed to adequately respond to or address their comments and Information Quality Act ("IQA")[9] compliance requests beforehand.

III. The Purpose of This FOIA Request

On December 7, 2009, EPA released a Technical Summary Document ("TSD")[10] to explain how the Administrator's positive endangerment and cause or contribute findings had been reached. The TSD essentially provides a summary and synthesis of numerous summarized and synthesized scientific reports, assessments and literature upon which the Administrator's findings were primarily based, including those of the Intergovernmental Panel on Climate Change ("IPCC"), the US Global Climate Research Program ("USGCRP"), and the National Research Council of the National Academies of Science ("NRC/NAS").[11] The TSD states that it:

> "relies most heavily on existing, and in most cases very recent, synthesis reports of climate change science and potential impacts, which have undergone their own peer-review processes, including review by the U.S. government. Box 1.1 describes this process[fn]. The information in this document has been developed and prepared in a manner that is consistent with EPA's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information*

Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, Volume 2: Issues Raised by Raised by Petitioners on EPA's Use of IPCC (Aug. 13, 2010); Environmental Protection Agency, *EPA's Response to the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, Volume 3: Process Issues Raised by Petitioners* (Aug. 13, 2010);

[6] *See* Environmental Protection Agency, *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule*, 75 FR 25324 (May 7, 2010).

[7] 75 FR 25402; *See also* 42 U.S.C. § 7475; 7479(1); § 7602(j); Environmental Protection Agency, *Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs* ("Timing Rule"), 75 Fed. Reg. 17,004 (Apr. 2, 2010); Environmental Protection Agency, *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule*, 75 FR 31514, 31,534-36 (June 3, 2010). *See also* Environmental Protection Agency, *Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units*; Proposed Rule, 79 FR 1430 (Jan. 8, 2014).

[8] *See* Environmental Protection Agency, *EPA's Denial of the Petitions to Reconsider the Administrator's Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a)of the Clean Air Act; Final Rule*, 75 FR 49556 (Aug. 13, 2010).

[9] *See* Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, 114 Stat. 2763 (2000), §515.

[10] *See* Environmental Protection Agency, *Technical Support Document ("TSD") For Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, EPA–HQ–OAR–2009–0472–11292 (Dec. 7, 2009).

[11] *See* Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 FR 66510.

> *Disseminated by the Environmental Protection Agency* (U.S. EPA 2002). In addition to its reliance on existing and recent synthesis reports, which have each gone through extensive peer-review procedures, this document also underwent a technical review by 12 federal climate change experts, internal EPA review, interagency review, and a public comment period."[12]

The TSD, furthermore, lists a number of "core reference documents". "These include the 2007 *Fourth Assessment Report* of the Intergovernmental Panel on Climate Change (IPCC), the *Synthesis and Assessment Products of the U.S. Climate Change Science Program* (CCSP) published between 2006 and 2009, the 2009 USGCRP scientific assessment, National Research Council (NRC) reports under the U.S. National Academy of Sciences (NAS), the National Oceanic and Atmospheric Administration's (NOAA's) 2009 State of the Climate in 2008 report, the 2009 EPA annual *U.S. Inventory of Greenhouse Gas Emissions and Sinks* and the 2009 EPA assessment of the impacts of global change on regional U.S. air quality."[13]

The TSD states that EPA relied primarily on these assessment reports "because they 1) are very recent and represent the current state of knowledge on GHG emissions, climate change science, vulnerabilities, and potential impacts; 2) have assessed numerous individual, peer-reviewed studies in order to draw general conclusions about the state of science; 3) have been reviewed and formally accepted, commissioned, or in some cases authored by U.S. government agencies and individual government scientists; and 4) they reflect and convey the consensus conclusions of expert authors."[14]

Consequently, the Administrator's endangerment and cause or contribute findings assert that, "the scientific assessments of the IPCC, the USGCRP, and the NRC were "the best reference materials for determining the general state of knowledge on the scientific and technical issues before the agency in making an endangerment decision."[15] In addition, said findings state that,

> "*[t]hese assessments therefore essentially represent the U.S. government's view of the state of knowledge on greenhouse gases and climate change.* For example, with regard to government acceptance and approval of IPCC assessment reports, the USGCRP Web site states that: 'When governments accept the IPCC reports and approve their Summary for Policymakers, they acknowledge the legitimacy of their scientific content.'[fn] It is the Administrator's view that such review and acceptance by the U.S. Government lends further support for placing primary weight on these major assessments" (emphasis added).[16]

Aside from describing "the peer review and publication approval processes of IPCC, CCSP/USGCRP and NRC reports", however, the TSD accompanying the Administrator's endangerment and cause or contribute findings offers little or no support for the EPA assertion that,

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[12] *Id.*, at p. 4.
[13] *Id.*, at p. 5.
[14] *Id.* See also Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 FR 66511.
[15] *Id.*
[16] *Id.*

"the comprehensiveness of these assessments and their review processes...provide EPA with assurances that this material has been well vetted by both the climate change research community and by the U.S. government."[17] Furthermore, the TSD offers little or no support for the EPA assertion that "this document relies on information that is objective, technically sound and vetted and of high integrity" and that "use of these assessments complies with EPA's information quality guidelines".[18]

The TSD recites and reproduces *prima facie* sections of IPCC, USGCRP and NRC peer review and conflict-of-interest procedures without their having been tested in actual practice. The TSD recites and reproduces prima facie sections of IPCC, USGCRP and NRC peer review and conflict-of-interest procedures without their having been tested in actual practice. EPA also has publicly released few, if any, of its own primary or secondary climate science peer review files substantiating how it actually undertook peer review in practice to verify the quality, integrity and accuracy of such report/assessments/literature upon which the Administrator's findings primarily relied, consistent with the highest and most rigorous level peer review, transparency and conflict-of-interest standards applicable to highly influential scientific assessments ("HISAs"), as required by the IQA, the Office of Management and Budget's ("OMB")'s IQA-implementing guidelines,[19] and EPA's corresponding IQA-implementing guidelines.[20]

The TSD and its contents were "incorporated by reference" by EPA into the federal registered-noticed GHG tailpipe emissions rules and the prevention of significant deterioration and Title V GHG tailoring rules for stationary source facilities.

A review of the record reveals that one of EPA's long-term goals has been to ensure that "[d]ecision makers in the states and EPA regional and program offices will use scientific information and decision tools from EPA's research and assessment program to protect human health by adapting to global change". However, it was previously reported that "[t]he Agency d[id] not have the resources, nor is it EPA's mission...to fully address the data and research needs for public health protection; data resources such as public health surveillance and disease registries are within the purview of the Department of Health and Human Services (HHS) through the Centers for Disease Control and Prevention (CDC)."

In addition, ITSSD is aware of at least one report identifying how EPA-ORD had experienced difficulties (during 2006-2011) ensuring the collection, retention and dissemination of useful climate science research information ("research products, technical information, or tools on climate change impacts, adaptation, and mitigation") for the benefit of EPA's regional and local offices.

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[17] *Id.*

[18] *Id.*

[19] *See* Office of Management and Budget ("OMB"), *Final Information Quality Bulletin for Peer Review (Dec. 16, 2004); OMB, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 67 FR 8452 (Feb. 22, 2002).

[20] *See* Environmental Protection Agency ("EPA"), *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Environmental Protection Agency*, EPA/260R-02-008 (Oct. 2002).

ITSSD also recognizes that, since 2008, the EPA-ORD-Global Change Research Program ("ORD-GCRP"), OW and OAR have increasingly directed their focus and proportionately committed more of their limited budget and other resources to federal interagency (CCSP/USGCRP) and international climate science initiatives. These entities have emphasized "the importance of aligning an Agency-wide strategy with these interagency programs" and the Moreover, ITSSD recognizes that EPA-ORD-NCEA "produces highly influential scientific assessments and thus is one of EPA's primary users of peer review services." "NCEA [also] oversees the peer review of EPA's health risk assessments, specifically the peer review panel process", and "may obtain peer review services from the NAS, the SAB, an EPA contract, or under an interagency agreement". Although EPA-ORD-NCEA's peer review process is deemed adequate, however, ITSSD is aware of, at least, one report which concluded that NCEA could "improve its system for populating and managing expert panels by better documenting conflict of interest decisions, establishing guidance for handling conflict of interest issues that arise after the panel has completed its deliberations, and providing more consistency between contractor and other third party procedures for selecting panels."

The record also reveals an EPA SAB report which concluded that, "[a]lthough EPA has little authority related to energy and little authority on climate other than that provided through the Supreme Court ruling and the Endangerment Finding, the lack of regulatory responsibilities could free ORD to pursue unfettered, innovative and creative research that supports voluntary and/or information-based programs" (emphasis added).

Finally, ITSSD's attention has been drawn to another report's findings which concluded that "EPA's TSD [p]eer [r]eview [m]ethodology [d]id [n]ot [m]eet OMB [r]equirements for [h]ighly [i]nfluential [s]cientific [a]ssessments." According to the report, "EPA had the TSD…[it] disseminated as part of its endangerment finding…reviewed by a panel of 12 federal climate change scientists. However, the panel's findings and EPA's disposition of the findings were not made available to the public as would be required for reviews of highly influential scientific assessments. Also, this panel did not fully meet the independence requirements for reviews of highly influential scientific assessments because one of the panelists was an EPA employee." Apparently, OAR officials had "not consider[ed] the TSD a scientific assessment [despite] the influential nature of the Agency's endangerment finding and the supporting technical information" the accompanying TSD contained. Lastly, this same report identified how EPA's "development of the endangerment finding did not follow all action development process steps as outlined in EPA's action development process guidance" applicable to 'Tier 1' actions. In particular, the analytic blueprint …[which] contained an outline for the endangerment finding…[and] listed the IPCC, CCSP (USGCRP), and NRC reports as core references for the development of OAR's TSD…did not explain what reviews were needed before accepting the other organizations' data or how the TSD would be peer reviewed…Although…OAR prepared nine briefing documents for EPA senior management that provided details on the Agency's plans for preparing and peer reviewing the TSD…[they]…did not explain why [the Agency] chose not to have a formal external peer review of the TSD."

Taking all of the above into account, this FOIA request seeks EPA documentation substantiating whether or not the peer review process EPA actually employed to ensure the quality, integrity and reliability of agency and third-party climate science assessments evaluating the secondary health and environmental effects in the U.S. of primary climate change drivers or adaptation measures, upon

which the Administrator's endangerment and cause or contribute findings primarily relied, fully satisfied the highest and most rigorous level IQA and EPA IQA-implementing guideline requirements.

IV. The Subject Matter of this FOIA Request

As previously noted, the TSD lists a number of "core reference documents" upon which the Administrator's endangerment and cause or contribute findings primarily relied, for which this FOIA request seeks substantiation of IQA compliance. In addition to often cross-referencing each other, some "core reference documents" also incorporate by reference other documents not expressly referenced in the TSD, as set forth in Appendix 1.[21]

Therefore, this FOIA request compels, with respect to the TSD's "core reference documents", EPA-R8's production of the following files:

1. Any and all "EPA-R8 primary-source climate science peer review files". Such files include any and all relevant data, records, documents, memoranda, email and other internet communications (including any and all internet-based communications and attachments transmitted by all current and former EPA-R8 employees by means of personal accounts) originating from, held, received, stored and/or archived by EPA-R8 or by an EPA-R8 (or other federal agency)-contracted third-party service provider during the period spanning January 1, 2006 through December 31, 2011. In particular, such files include those relating directly or indirectly to EPA-R8's peer review of the primary-source scientific information, reports, studies and/or assessments prepared, developed, reviewed and/or referenced by the Intergovernmental Panel on Climate Change ("IPCC") in its First, Second, Third and/or Fourth Assessment Reports ("ARs") (including both peer-reviewed and non-peer-reviewed ("gray") third-party literature), reflecting EPA's view of climate science, upon which the EPA Administrator relied in undertaking the endangerment and 'cause or contribute' analyses under Section 202(a)(1) of the U.S. Clean Air Act ("CAA") and reaching positive 'endangerment' and 'cause or contribute' findings for greenhouse gases ("GHGs") thereunder.

   Primary-source climate science peer review files also include all EPA-R8 peer review contracts entered into with other federal agencies and private parties, as well as, any and all correspondences and decisions related to suitability or potential conflicts of interest or biases of prospective panelists, for purposes of evaluating such primary-source IPCC science. In addition, primary-source climate science review files include all EPA-R8 peer review files relating directly or indirectly to agreements entered into with other national governments, national government agencies and/or intergovernmental organizations, pursuant to the Case-Zablocki Act (1 USC § 112b).

[21] *See* Appendix 1 - EPA-TSD "Core Reference Documents" and Assessments Incorporated Therein Upon Which EPA Administrator's Endangerment and Cause or Contribute Findings Primarily Rely, *infra*.

2. Any and all "EPA-R8 secondary-source climate science peer review files". Such files include any and all relevant data, records, documents, memoranda, email and other internet communications (including any and all internet-based communications and attachments transmitted by EPA-R8 current and former employees by means of personal accounts) originating from, held, received, stored and/or archived by EPA-R8 or by an EPA-R8- (or other federal agency)-contracted third-party service provider during the period spanning January 1, 2006 through December 31, 2011. In particular, such files include those relating directly or indirectly to secondary-source synthesized and summarized information, reports, studies and assessments prepared, developed and/or reviewed by EPA-R8 that reflect EPA's view of climate science and reference the primary-source IPCC scientific information, reports, studies and assessments noted above, as set forth in Appendices 3 and 4 below,[22] upon which the Administrator relied in reaching positive CAA Section 202(a)(1) 'endangerment' and 'cause or contribute' findings.

For purposes of this FOIA request, EPA-R8 secondary-source climate science peer review files include those relating directly or indirectly to EPA-HQ and/or EPA-R8 secondary-source synthesized and summarized information, reports, studies and assessments referenced in EPA's TSD, namely those: 1) prepared, developed and/or reviewed by the National Research Council ("NRC") of the National Academies of Sciences ("NAS") and/or any of its review committees; 2) prepared, developed and/or reviewed, *in whole or in part*, by EPA-R8 incident to its direct and indirect participation in the US Global Climate Research Program USGCRP ("USGCRP"), as set forth in Appendix 2 below,[23] in accordance with the Global Change Research Act of 1990,[24] the National Climate Program Act[25] and/or the Global Climate Protection Act of 1987;[26] and/or 3) prepared by other third parties (including other federal agencies) and referenced by EPA-HQ. Secondary-source climate science peer review files also include all EPA-R8 service-related contracts entered into with: a) other federal agencies to peer review USGCRP assessments (including the 21 SAPs) pursuant to an EPA Memorandum of Understanding ("MOU"), EPA's cooperation authority under Clean Water Act Section 104(b)(2) and/or Clean Air Act Section 103(b)(2), the Economy Act (31 U.S. Code 1535) or other more general science research and analysis cooperation agreements; and b) private parties, such as pursuant to a NOAA Regional Integrated Sciences and Assessments ("RISAs") or other federal agency programs, as well as, any and all correspondences and decisions relating thereto.

For these purposes, EPA-R8 includes, but is not limited to, all EPA-R8 officials and staff serving on, advising or otherwise liaising with EPA's SAB and its members, as publicly available, and EPA's HICCAC, CESLAC, ACSERAC, CHPAC and BOSC federal advisory committees, and by extension, all past and present HICCAC, CESLAC, ACSERAC, CHPAC and BOSC and (relevant BOSC subcommittee) members (serving

[22] *See* Appendix 3 – USGCRP/CCSP Documents Referencing IPCC Assessment Reports *infra*; Appendix 4 – NRC Reports Referencing IPCC Assessment Reports, *infra*.
[23] *See* Appendix 2 - 'Lead' Agency Burdens - USGCRP/CCSP "Core Reference Documents", *infra*.
[24] Title I, 104 Stat. 3097, 15 U. S. C. §§2921-2938.
[25] §5, 92 Stat. 601, 15 U. S. C. §2901 et seq.
[26] §1103, 101 Stat. 1408-1409.

between January 1, 2006 and December 31, 2011), as publicly available, that/who EPA-R8 knew, or had reason to know, had shared and/or exchanged files and/or email or other communications with, EPA-ORD, EPA-ACE, EPA-OW and/or EPA-OAR officials and/or staff.

3. Any and all EPA-R8 primary-source climate science peer review files and EPA-R8 secondary-source climate science peer review files that EPA-R8, incident to its direct and indirect participation in the USGCRP during 2006-2011, shared and/or exchanged with and/or received from "other U.S. federal agencies" participating in the USGCRP, and which relate directly or indirectly to EPA-R8's rendering of assistance in the preparation, development and/or review of such other federal agencies'-prepared and/or developed secondary-source synthesized and summarized USGCRP information, reports, studies and assessments. These other agencies include the various respective offices, officials and staffs of the U.S. Departments of Commerce/National Oceanic and Atmospheric Administration ("DOC/NOAA"), Defense ("DOD"), Energy ("DOE"), Interior (U.S. Geological Survey) ("DOI/USGS"), State ("DOS"), Transportation ("DOT") and Agriculture ("USDA"), the National Aeronautics and Space Administration ("NASA"), the National Science Foundation ("NSF"), the Smithsonian Institution, and the US Agency for International Development ("USAID").

   For purposes of this FOIA request, all references herein to "other U.S. federal agencies" include, but are not limited to, such agency headquarters, line, regional and local offices and programs, their officials (including office and program directors and associate directors) and staff, and all appointed members of agency climate science-related advisory boards and federal advisory committees that were established, operating and/or terminated during the period spanning January 1, 2006 through December 31, 2011.

4. Any and all EPA-R8 primary-source climate science peer review files and EPA secondary-source climate science peer review files that EPA-R8, incident to its direct and indirect participation in the USGCRP during 2006-2011, shared and/or exchanged with and/or received from the Director, officials and staff of the White House Office of Science and Technology Policy ("OSTP"), the OSTP Environment, Natural Resources and Sustainability Committee, the US Global Climate Research Program Subcommittee on Global Change Research and its Interagency Working Groups (especially its Interagency National Climate Assessment (INCA) Working Group and International Research and Cooperation IWG), the National Science and Technology Council and its Committee on Environment, Natural Resources and Sustainability, and the President's Interagency Climate Change Adaptation Task Force, co-organized by the White House Council on Environmental Quality ("CEQ") and OSTP.

5. Any and all EPA-R8 primary-source climate science peer review files and EPA-R8 secondary-source climate science peer review files that EPA-R8, incident to its direct and indirect participation in the USGCRP during 2006-2011, shared and/or exchanged with and/or received from officials and staff of the White House Office of Management and Budget ("OMB") and its Office of Information and Regulatory Affairs ("OIRA"), other than

EPA-HQ-OAR-2009-0171-0124, EPA-HQ-OAR-2009-0171-0122, EPA-HQ-OAR-2009-0171-0131 or EPA-HQ-OAR-2009-0171-11665, which are publicly available.

6. Any and all EPA-R8 primary-source climate science peer review files and EPA-R8 secondary-source climate science peer review files that EPA-R8, incident to its direct and indirect participation in the USGCRP during 2006-2011, shared and/or exchanged with and/or received from officials and staff of the National Academies of Science ("NAS"), including the National Research Council ("NRC") and its several review committees and their individual members, as publicly available.

7. Any and all EPA-R8 primary-source climate science peer review files and EPA-R8 secondary climate science peer review files that explain EPA's selection of the specific peer reviewers of the 1st, 2nd, 3rd and 4th IPCC Assessment Reports, and USGPRC, NRC and other third-party climate assessments used as the bases for the Administrator's endangerment and cause or contribute findings, as noted above. They should set forth the specific qualifications required of prospective individual peer reviewers and/or peer review panels appointed to evaluate such assessments, and those safeguards, if any, employed to ensure the verification of peer reviewer credentials and reputations, and the objectivity and credibility of the EPA peer reviewer selection process undertaken with respect to such assessments, from inception to completion.

For example, such files include those explaining the specific policies, contractual requirements, and/or other measures that EPA-R8 had taken to ensure against or otherwise substantially minimize peer reviewer conflicts of interest and biases, including whether:

a) EPA-HQ (including all relevant lines, components and subcomponents) and/or EPA-R8 mandated for itself and for all third-party interagency and private contractors, that prospective individual peer reviewers be vetted via internet background searches to identify potential conflicts of interest and appearances of bias or partiality;
b) EPA-HQ and/or EPA-R8 mandated disclosure of nationality and/or past and present foreign government affiliation from prospective peer reviewers serving on prior and ongoing ad hoc and standing EPA-R8 appointed federal advisory committees;
c) EPA-R8 established and followed specific procedures for addressing conflict of interest and lack of impartiality issues that should arise after panel selection;
d) EPA-R8 peer review contracts required written recertification from panelists, before a peer review panel is convened, stating that their responses to the questionnaire have not changed;
e) EPA-R8 peer review contracts required that reviewers self-report any changes that may impact their conflict of interest status or lack of impartiality status at any point in the process;
f) EPA-R8 required all third-party peer review contractors to use similar procedures for identifying any changes in selected panelists' conflict of interest status; and
g) EPA-R8 had undertaken any oversight of contracted peer reviewers and/or peer review panels to ensure that climate science peer reviews conducted by third parties actually followed agency peer review contractual guidelines.

These files should also include any and all correspondences and decisions related to suitability, or potential conflicts of interest or biases of prospective panelists.

8. Any and all EPA-R8 primary-source climate science peer review files and EPA-R8 secondary climate science peer review files that explain the particular peer reviewer and peer review panel records gathering and retention practices EPA-R8 actually employed with respect to these specific assessments. For example, such files should describe whether EPA-HQ (including all relevant lines, components and subcomponents) and EPA-R8 required of itself of its third-party interagency and private contractors, that all climate science peer review records are maintained throughout the peer review process and that these records include any correspondence and decisions related to suitability, or potential conflicts of interest or biases of prospective panelists. They should also describe whether EPA-HQ and/or EPA-R8 defined as a matter of policy and ensured that all such climate science peer review records include any correspondence and decisions related to suitability, or potential conflicts of interest or biases of prospective panelists, and whether EPA-R8 retained a copy of all such contractor records.

9. Any and all EPA-R8 primary-source climate science peer review files and EPA-R8 secondary climate science peer review files that describe the specific measures actually taken by EPA-HQ to ensure that the scientific evidence which constituted the primary bases for the Administrator's CAA Section 202(a)(1) findings (i.e., the IPCC, USGCRP, NRC and other third-party generated climate science assessments, reports, literature, etc., which served as the TSD's "core reference documents" or were incorporated by reference within the TSD's "core reference documents") satisfied the highest and most rigorous level IQA and OMB/EPA IQA-implementing guideline peer review, transparency and conflict of interest requirements applicable to highly influential scientific assessments ("HISAs").

For example, such files should identify whether and how:

a) EPA-HQ, as designated 'lead' agency preparer/developer/author of certain USGCRP synthetic assessment products ("SAPs"), and EPA-R8, as contributor, prepared the required memoranda certifying each such SAP's compliance with the highest and most rigorous level IQA and corresponding OMB/EPA IQA-implementing guidelines applicable to highly influential scientific assessments ("HISAs");
b) EPA-HQ and/or EPA-R8 included within said memorandum author responses to peer reviewer comments, public comments and lead agency review comments, and otherwise demonstrated that it informed authors how to comply with such HISA standards;
c) EPA-HQ and/or EPA-R8 substantiated each such certification;
d) EPA-HQ and/or EPA-R8 verified that other federal agencies designated as 'lead' agency preparer/developer/author of certain USGCRP synthetic assessment products ("SAPs"), prepared the required memoranda certifying each such SAP's compliance with the highest and most rigorous level IQA and corresponding OMB/EPA IQA-implementing guidelines applicable to highly influential scientific assessments ("HISAs");
e) EPA-HQ and/or EPA-R8 verified that each such agency included within said memorandum author responses to peer reviewer comments, public comments and lead

agency review comments, and otherwise demonstrated that it informed authors how to comply with such HISA standards;

f) EPA-HQ and/or EPA-R8 verified such other federal agency's substantiation of each certification;

g) EPA-HQ and/or EPA-R8 actually tested in practice, prior to the Administrator's reaching positive endangerment and cause or contribute findings, the peer review processes and procedures of the IPCC and USGCRP to ensure that they satisfied the highest and most rigorous level IQA peer review, transparency and conflict of interest standards applicable to HISAs; and

h) EPA-HQ and/or EPA-R8 modified or otherwise adjusted the Administrator's endangerment and cause or contribute findings to take into account reported systemic IPCC peer review process and procedure flaws identified during a 2010 IPCC peer review audit undertaken by the InterAcademy Council, an IPCC third-party advisor.

V. Request for Public Interest Fee Waiver

ITSSD herewith respectfully requests a waiver of any and all applicable fees pursuant to 5 U.S.C. Sec. 552(a)(4)(A)(iii) and 40 CFR Part 2.107(l) <http://www.epa.gov/foia/2107.htm>. The FOIA provides that requested records shall be furnished without or at reduced charge if "disclosure of the 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 is not primarily in the commercial interest of the requestor."[27]

1. *Disclosure of the Requested Records is in the Public Interest Because it is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government*

ITSSD, in this instance, meets the four-factor test EPA uses to determine whether disclosure of the requested information is in the public interest.

First, the requested records "direct[ly] and clear[ly]" concern identifiable "operations or activities of the government"[28] – i.e., records pertaining to the internal and external operations of the EPA. In particular, this request seeks those records that reveal the specific measures EPA had actually undertaken to ensure that EPA, other federal agency and third-party (largely international) climate change-related highly influential scientific assessments and other influential scientific information which the EPA Administrator had relied upon as the primary basis for reaching positive GHG endangerment and cause or contribute findings and promulgating economically significant national mobile and stationary source GHG emissions control regulations, fully satisfied the highest and most rigorous level peer review, transparency and conflict-of-interest requirements imposed by the Information Quality Act ("IQA") and EPA and OMB IQA-implementing guidelines.

[27] 5 U.S.C. Sec. 552(a)(4)(A)(iii); 40 CFR Part 2.107(*l*)(1).

[28] 40 CFR Part 2.107(*l*)(2)(2)(i)-(iv) (explaining the first of four fee waiver requirements identified in EPA's fee waiver regulation).

Second, the requested information is "likely to contribute" to the understanding of EPA's operations because the information to be disclosed consists largely of "meaningfully informative' substantive material, as opposed to routine administrative information,[29] and is not already in the public domain in a sufficiently detailed and explanatory form. Prior EPA stakeholder climate change-related IQA-focused requests and EPA responses thereto were treated tangentially to and conflated with EPA responses to stakeholder non-IQA-related comments submitted pursuant to more generally focused Administrative Procedure Act notice and comment procedures. Where EPA addressed stakeholder climate science-related comments, it focused substantially more on IPCC, USGCRP and NRC scientific peer review manual procedures rather than on each organization's actual practice of them. Public disclosure of the requested information will significantly aid the public in evaluating whether EPA actually met its IQA statutory and OMB/EPA IQA-implementing guideline obligations.

Third, disclosure will contribute to "public understanding," as opposed to the understanding of the requester or a narrow segment of interested persons.[30] 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.

Fourth, disclosure of the requested information is likely to contribute "significantly" to the public understanding of the EPA's activities, as these records are not readily available from other sources and public understanding of the EPA's operations will be substantially greater as a result of disclosure.[31]

2. *Disclosure of the Requested Information is Not Primarily in the Commercial Interest of the Institute for Trade, Standards and Sustainable Development (ITSSD)*

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.

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[29] 40 CFR Sec. 2.107(*l*)(2)(ii).
[30] *Id.*, Sec. 2.107(*l*)(2)(iii).
[31] *Id.*, Sec. 2.107(*l*)(2)(iv).

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. 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.[32] For each of the foregoing reasons, this request qualifies as one that is not primarily in the commercial interest of ITSSD.

VI. Request for Noncommercial Educational Institution Fee Categorization

If EPA decides not to grant ITSSD's request for a waiver or reduction of fees under said statute and regulation, the ITSSD requests from EPA-HQ the reduced fee structure applicable to "educational institutions". In this regard, ITSSD also qualifies as an "educational institution" as contemplated by 5 USC Sec. 552(a)(4)(A)(ii)(II) and 40 CFR Sec. 2.107(b)(4).[33]

ITSSD is organized and operated to conduct and publish *inter alia* 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 the public. The information requested is 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.[34] 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.[35] Furthermore, this FOIA request does not seek records for a commercial use. ITSSD will use all responsive records to advance ITSSD research and educational

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[32] *See* Campbell v. U.S. Department of Justice, 164 F.3d 20, 35-36 (DC Circ. 1998). ("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).").

[33] *See also* 40 CFR Sec. 2.107(c)(ii) (identifying acceptable fees to be charged to educational institutions).

[34] *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 (advising 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.

[35] 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.

efforts, particularly, its analysis of governmental agency objectivity, reliability, efficiency, transparency and accountability.

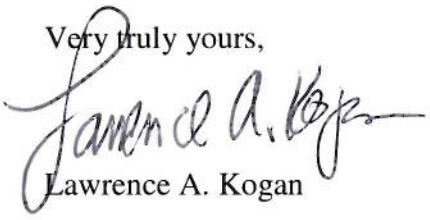
VII. Conclusion

ITSSD hereby requests that responsive records be produced in electronic format (e.g., searchable CD or PDF). If a certain set of responsive records can be produced more readily, ITSSD respectfully requests that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit. ITSSD also requests that for any segregable portions that are not exempt to be disclosed *without* redaction.

Lastly, ITSSD hereby requests and shall expect a response within twenty (20) working days as provided by law. If ITSSD's request is denied in whole or in part, it requests and expects a detailed justification for such delay or withholding of information. ITSSD is willing to provide a reasonable sum of $250 to defray the agency's costs of duplication, but reserves the right to challenge the assessment of any such fees or costs.

We thank you for your prompt attention to this matter.

Very truly yours,



Lawrence A. Kogan

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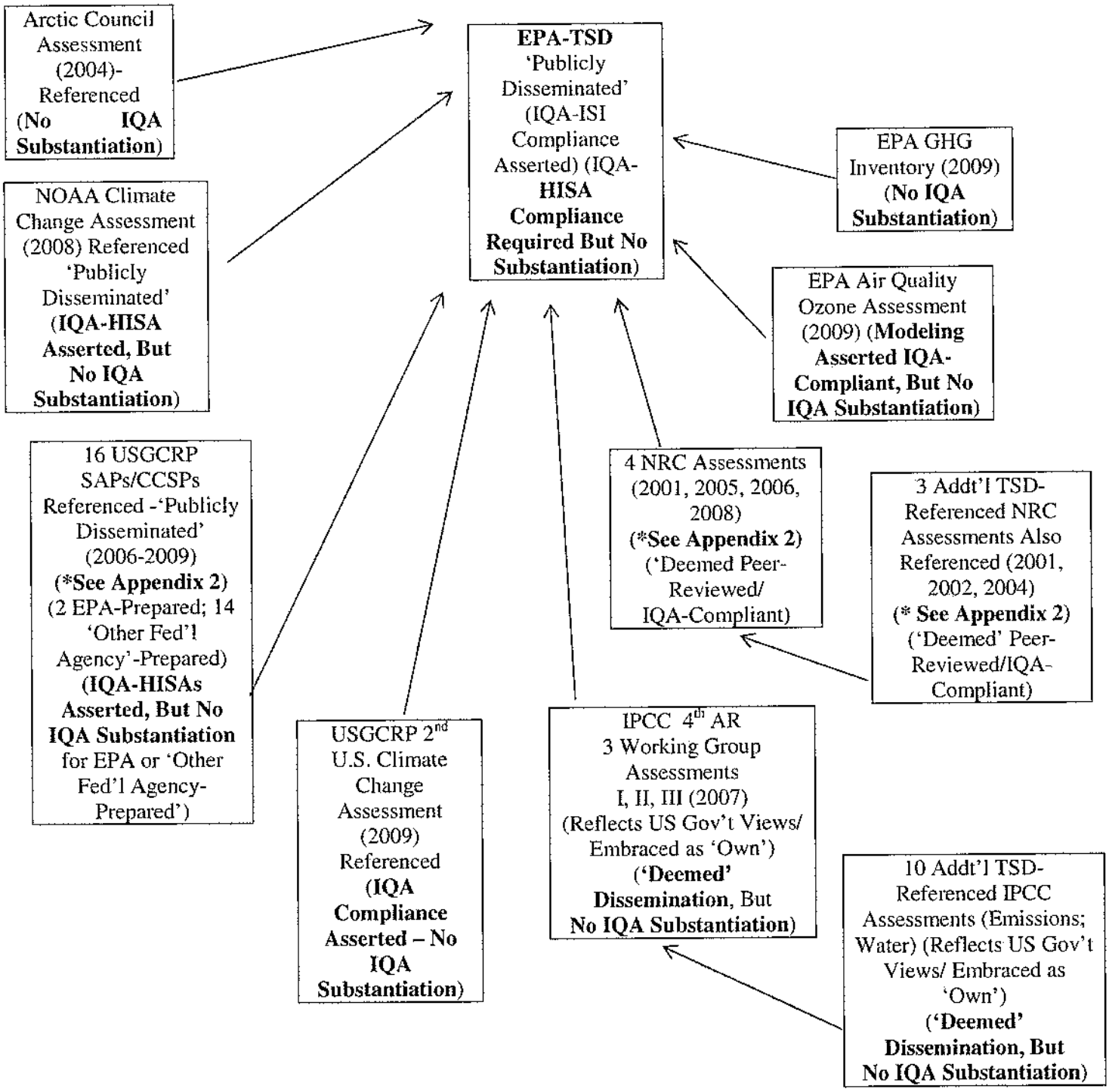
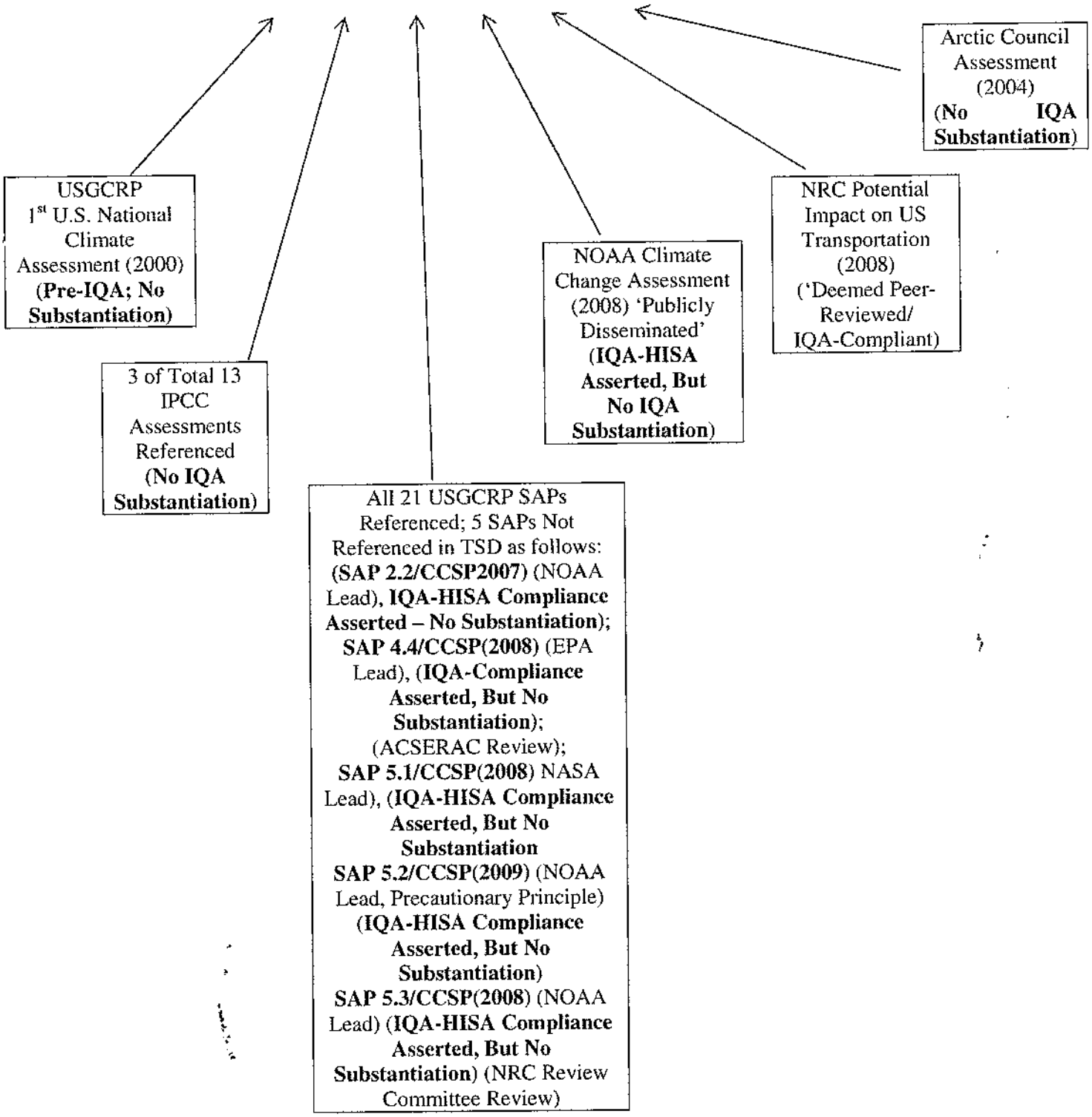
Appendix 1 - EPA-TSD "Core Reference Documents" and Assessments Incorporated Therein Upon Which EPA Administrator's Endangerment and Cause or Contribute Findings Primarily Rely




USGCRP 1st U.S. National Climate Assessment (2000) (Pre-IQA; No Substantiation)
3 of Total 13 IPCC Assessments Referenced (No IQA Substantiation)
All 21 USGCRP SAPs Referenced; 5 SAPs Not Referenced in TSD as follows: (SAP 2.2/CCSP2007) (NOAA Lead), IQA-HISA Compliance Asserted – No Substantiation); SAP 4.4/CCSP(2008) (EPA Lead), (IQA-Compliance Asserted, But No Substantiation); (ACSERAC Review); SAP 5.1/CCSP(2008) NASA Lead), (IQA-HISA Compliance Asserted, But No Substantiation SAP 5.2/CCSP(2009) (NOAA Lead, Precautionary Principle) (IQA-HISA Compliance Asserted, But No Substantiation) SAP 5.3/CCSP(2008) (NOAA Lead) (IQA-HISA Compliance Asserted, But No Substantiation) (NRC Review Committee Review)
NOAA Climate Change Assessment (2008) 'Publicly Disseminated' (IQA-HISA Asserted, But No IQA Substantiation)
NRC Potential Impact on US Transportation (2008) ('Deemed Peer-Reviewed/ IQA-Compliant)
Arctic Council Assessment (2004) (No IQA Substantiation)

Appendix 2 –'Lead' Agency Burdens
USGCRP/CCSP "Core Reference Documents"

'Lead' Federal Agency Role *EPA Lead-Author Role **EPA Lesser Role	USGCRP/CCSP SAP/TSD Reference	Subject Matter Assessed
EPA	SAP 4.6/CCSP(2008b)	Global change effects on human health/welfare systems
	SAP 4.1/CCSP(2009b)	Mid-Atlantic coast sensitivity to sea-level rise
DOC/NOAA	SAP 1.1/CCSP(2006)	Lower-atmosphere temperature trends
	SAP 1.3/CCSP(2008g)	Historical climate data/observed change linkages
*Jeff Cohen, USEPA Lead Author, Chap. 2; Exec Summ *Terry Keating, USEPA Lead Author, Chap. 3; Exec Summ ** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 2.4/CCSP(2008h)	Ozone layer-depleting substance impacts on ultraviolet radiation exposure
** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 3.2/CCSP(2008d)	Gas/aerosol emissions-based climate predictions
** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 3.3/CCSP(2008i)	Regional weather/climate extremes
	USGCRP/GCCI/2009	Global Climate Change Impacts
DOE ** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 2.1b/CCSP(2007b)	Global Change Scenarios - GHG emissions/atmospheric concentrations integration
** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 3.1/CCSP(2008c)	Climate model strengths/weaknesses
** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 4.5/CCSP(2007a)	Climate-change effects on energy production/use
DOI/USGS ** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 1.2/CCSP(2009c)	Past climate variability and Arctic/high latitude changes
	SAP 3.4/CCSP(2008a)	Abrupt climate-change
**EPA Designated Contributing Agency ** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 4.2/CCSP(2009d)	Ecosystem climate-change thresholds
NASA ** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 2.3/CCSP(2009a)	Atmospheric aerosol properties' climate-change impact
DOT ** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 4.7/CCSP(2008f)	Climate-change/variability impacts on regional transportation systems & infrastructure
USDA ** Michael W. Slimak, USEPA SAP Advisory Group Chair	SAP 4.3/CCSP(2008e)	Climate-change effects on agriculture, land and water resources/biodiversity

Appendix 3 – USGCRP/CCSP Documents Referencing IPCC Assessment Reports

USGCRP/CCSP SAPs *EPA-TSD Core Reference Documents ! EPA-TSD Non-"Core Reference Documents" (But Incorporated by Reference in TSD)	Referenced IPCC Assessment Reports
CCSP(2009a)	1990, 1992, 1995, 1996, 2007
*CCSP(2009b)/SAP4.1 **(EPA Lead Agency)**	1990, 1992, 1996, 2001, 2007
CCSP(2009c)	1990, 2000, 2007
CCSP(2009d)	1996, 2007, 2007a, 2007b
CCSP(2008a)	2001, 2005, 2007
*CCSP(2008b)/SAP4.6 **(EPA Lead Agency)**	1994, 1995, 1996, 2000, 2001, 2001a, 2001b, 2001c, 2005, 2007, 2007a, 2007b, 2007c
CCSP(2008c)	1990, 2000, 2001, 2007, 2007a, 2007b
!SAP 4.4/CCSP(2008) **(EPA Lead Agency)**	2000, 2001, 2001a, 2001b, 2007, 2007a, 2007b, 2007c, IPCC-TGIC 2007
*SAP 3.2/CCSP(2008d) **NOAA Lead Agency**	1990, 1992, 1996, 2001, 2001b, 2007, 2007a, 2007b
CCSP(2008e)	1990, 2000, 2001, 2007
CCSP(2008f)	1996, 2000, 2001, 2007
*SAP 1.3/CCSP(2008g) **NOAA Lead Agency**	2001, 2007, 2007a, 2007b
*SAP 2.4/CCSP(2008h) **NOAA Lead Agency** **(EPA Contributing Author)**	1999, 2001, 2005, 2007
*SAP 3.3/CCSP(2008i) **NOAA Lead Agency**	2001, 2007, 2007a, 2007b
CCSP(2007a)	2001, 2001a, 2005a, 2005b, 2007
CCSP(2007b)	1990, 1992, 1996a, 1996b, 1999, 2001, 2001a, 2001b, 2001c
*SAP 1.1/CCSP(2006) **NOAA Lead Agency**	1990, 2001
! SAP 2.2/CCSP(2007) **NOAA Lead Agency**	2000, 2001, 2007
! SAP 5.2/CCSP(2009) **NOAA Lead Agency**	2001, 2001a, 2001b, 2004, 2005, 2007
! SAP 5.3/CCSP(2008) **NOAA Lead Agency**	2007, 2007a, 2007b
*USGCRP/GCCI/2009 **NOAA Lead Agency**	2000, 2007a, 2007b, 2007c, 2007d, 2008(Water)

Appendix 4 – NRC Reports Referencing IPCC Assessment Reports

NRC Reports * EPA-TSD "Core Reference Documents" ! Non-TSD "Core Reference Documents" (But Incorporated by Reference in TSD)	Referenced IPCC Assessment Reports
*NRC(2008)	2005, 2007a, 2007b
*NRC(2006b)	1990, 2001, 2001
*NRC(2005)	1990, 1992, 1996, 2001
!NRC(2004)	2001
!NRC(2002)	2001a, 2001b
*NRC(2001a)	2001
!NRC(2001b)	1996