Message

From: Wetherington, Michele [Wetherington.Michele@epa.gov]
Sent: 9/5/2019 3:09:22 PM
To: Gordon, Lisa Perras [Gordon.Lisa-Perras@epa.gov]; Bouma, Stacey [Bouma.Stacey@epa.gov]; Cooper, Jamal [cooper.jamal@epa.gov]
CC: Able, Tony [Able.Tony@epa.gov]
Subject: RE: GA narrative mtg..Friday morning....comment from Corey...

This is what I pulled from: https://www.merriam-webster.com/dictionary/unreasonable

unreasonable

adjective

un·rea·son·able

Legal Definition of *unreasonable*

: not reasonable **:** beyond what can be accepted: as
a : clearly inappropriate, excessive, or harmful in degree or kindan *unreasonable* delayan *unreasonable* restraint of trade
b : lacking justification in fact or circumstancean *unreasonable* inference*especially* **:** IRRATIONAL_SENSE Bthe agency decision was *unreasonable*
c : not supported by a warrant or by a valid exception to a warrant requirement (as when there is reasonable suspicion) and therefore unconstitutionalthe right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures, shall not be violated— *U.S. Constitution* amend. IV— see also SEARCH, SEIZURE

Everyone wants the legal definition of the word since this is IN A REGULATION.
We can pick whichever two that match: unreasonable adjective or unreasonably adverb. Both adjectives and adverbs modify, so it doesn't matter.

There are many legal canons and you can pick and choose them to support whatever you want. Just like all legal interpretations and why we have judges. It might not be persuasive to HQ politicals, I don't know. But it is an argument we have available to us, and to the extent it supports what we wanted to do, we can use it.

Michele

From: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>
Sent: Thursday, September 5, 2019 11:02 AM
To: Bouma, Stacey <Bouma.Stacey@epa.gov>; Wetherington, Michele <Wetherington.Michele@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>
Subject: RE: GA narrative mtg..Friday morning....comment from Corey...

Stacey, Understood re: priorities. But just a note on the level of discussion here, at this late stage of the game – assuming this is from CB: *First, unreasonably is not an adjective but it is an adverb, and any follow up definition if you*

point to one should probably point to the adverb's definition, which is something like "in a way that is unfair or unacceptable".

From Webster's and Dictionary.com:
Unreasonable, adjective
un·rea·son·able | \ ˌən-ˈrēz-nə-bəl , -ˈrē-zᵊn-ə-bəl\
Definition of *unreasonable*
1a : not governed by or acting according to reason unreasonable people
b : not conformable to reason : absurd unreasonable beliefs
2 : exceeding the bounds of reason or moderation working under unreasonable pressure
Other Words from *unreasonable; unreasonably*

Definition of **Adjective** from Webster's. : a word belonging to one of the major form classes in any of numerous languages and typically serving as a modifier of a noun to denote a quality of the thing named, to indicate its quantity or extent, or to specify a thing as distinct from something else

---

From: Bouma, Stacey <Bouma.Stacey@epa.gov>
Sent: Thursday, September 5, 2019 10:29 AM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>; Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>
Subject: GA narrative mtg..Friday morning....comment from Corey...

deliberative and pre-decisional

HQ is working to get our briefing with Sara for Friday morning (gave them the 9-9:45 timeframe). They are going to invite OGC.

I wanted to send Corey's comments just for reference. I don't think we need to change anything in the briefing sheet but just want you to be aware of his thinking (more for our preparedness if it comes up). Main hurdle, as JMG mentioned, is explaining to Sara why it is a substantive change (using meaning of the word, resulting second layer of review, change to upper boundary/not defined/kayak example).

I think our focus needs to be on our briefing (if there's time to make corrections to Corey's briefing sheet that's fine or if you can split the tasks but the priority is our briefing/briefing sheet)

I think we are in agreement that waiting for the outcome court case is not very compelling unless you start from the position that the change is non-substantive. We can probably move through that pretty quickly. I am not as solid on the other argument in there about definitions and surplusage cannon. First, unreasonably is not an adjective but it is an adverb, and any follow up definition if you point to one should probably point to the adverb's definition, which is something like "in a way that is unfair or unacceptable". That seems to tell a different story. And citing a cannon of statutory interpretation often invites citations to alternative cannons, while it is hard to persuade policy people here with such a formalistic argument.
But, of course, you all are welcome to make it.

Stacey L. Bouma, Chief
Water Quality Standards Section
EPA Region 4 Water Division
(404) 562-9392