

involved in extensive research using materials from the Library's collections.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Regulation

In consideration of the foregoing the Library of Congress amends 36 CFR part 701 to read as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 will continue to read as follows:

Authority: 2 U.S.C. 136.

2. Section 701.8 is revised to read as follows:

§ 701.8 Assignment of Special Research Facilities.

(a) *Study Shelves.* Individually-assigned reserve shelves are available adjacent to several reading rooms for the use of researchers whose work requires access to the same materials over an extended period of time. Shelves are assigned to applicants for a specific period through the Research Facilities Office, Humanities and Social Sciences Division. Shelves must be renewed at designated intervals.

(b) *Study desks.* A limited number of study desks are available for the use of researchers engaged in full-time research projects involving extensive use of materials requiring larger amounts of material drawn from the Library's collections, more work space, greater physical security, and/or a more private environment than might be possible in a reading room. Study desk areas shall not be used as a primary office from which the project undertaken is operated, nor as a business location. Study desks are initially assigned for a period not to exceed one year, with the assignment and termination dates determined by the Head of the Main Reading Room Section, Humanities and Social Sciences Division. The assignment of a study desk beyond the first year may be made by the Chief of the Humanities and Social Sciences Division for a maximum of two years from the first assignment when there is a demonstrated need for the continuation of the assignment. Assignments beyond two years require an exception to this part and shall be specifically authorized by the Associate Librarian for Library Services. Any researcher who demonstrates a continuing need for a facility beyond an expiration date may reapply, but priority will be given to applicants on the waiting list who meet the specific criteria.

(c) *Congressional use of study rooms.* Rooms 225A–225E in the James Madison Building are available for the exclusive use of Members of Congress and Committees for official research that requires use of the Library's collections or files in the Congressional Research Service. Assignment of study rooms shall be made in accordance with the Resolution of the Joint Committee on the Library of September 12, 1959, which states: “* * * occupancy of study rooms assigned to Members should not be delegated to others than members of their own office staff who are paid no less than 20 hours per week from U.S. Government funds and at a rate of not less than the minimum salary of a GS–3 clerk-typist * * *, and that Members should not request assignments of rooms for themselves merely for the purpose of sponsoring the work of private individuals and non-Government groups. * * *” Rooms are assigned for one year or the life of the project, whichever is less, with the assignment and termination dates determined by the Director of the Congressional Relations Office.

Dated: November 20, 1997.

James H. Billington,

The Librarian of Congress.

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POSTAL SERVICE

39 CFR Parts 262 and 265

Records and Information Management Definitions and Release of Information

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: The Postal Service is amending its regulations relating to the availability of records to the public. This rule is made necessary by amendments to the Freedom of Information Act, made by Public Law 104–231, the “Electronic Freedom of Information Act Amendments of 1996.” The amendments address the availability of electronic records, the creation of a new electronic reading room, and procedural aspects, such as time limits, expedited processing, denial specifications, and reporting requirements.

DATES: The interim regulations take effect on December 5, 1997. Comments must be received on or before January 5, 1998.

ADDRESSES: Written comments may be mailed or delivered to Freedom of Information/Privacy Acts Officer,

United States Postal Service, 475 L'Enfant Plaza, SW, Room 8800, Washington, DC 20260–5243.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (5 U.S.C. 552) was amended on October 2, 1996, by Public Law 104–231, the “Electronic Freedom of Information Act Amendments of 1996.” Consistent with the amended law, the interim regulations:

a. Add a new category of reading room records consisting of any records processed and disclosed in response to a FOIA request that the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records. These and other reading room records created on or after November 1, 1996 also will be made available through the Postal Service's world wide web home page after November 1, 1997.

b. Define the term “record” to include electronic records; provide that the requester may choose the form or format in which to receive records; and state that the Postal Service will make reasonable efforts to search for records in electronic form or format unless such efforts would significantly interfere with the operation of its computer systems.

c. Extend the period for response from 10 to 20 working days as of October 2, 1997; provide for notification of the requester when that period cannot be met to arrange for an alternative time frame or a modified request; and establish a new procedure for handling requests for expedited processing.

d. Require the custodian to indicate on the released portion of a record the amount of information deleted and to include in a written response an estimate of the volume of any records withheld in full.

e. Change the annual reporting period from a calendar year to the fiscal year that, for most of the Executive branch, begins on October 1, and provide that those reports will be made available to the Attorney General and on the Postal Service's world wide web page.

Other interim changes update organizational titles and the schedule of fees for searching for records by computer.

The Postal Service has determined to place the amendments immediately into effect on an interim basis, because many of the key provisions implement statutory changes that take effect by force of law on October 2, 1997. Nonetheless, the Postal Service invites interested persons to submit written comments concerning the interim rule.

These comments will be considered before a final rule is adopted.

List of Subjects

39 CFR Part 262

Archives and records, Records and information management definitions.

39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees, Release of information.

For the reasons set out in the preamble, 39 CFR parts 262 and 265 are amended as set forth below.

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

1. The authority citation for part 262 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a; 39 U.S.C. 401.

2. Section 262.2(a) is revised to read as follows:

§ 262.2 Officials.

(a) *Records Custodian.* The postmaster or other head of a facility such as an area vice president, district manager, or head of a postal installation or department who maintains Postal Service records. Vice presidents are the custodians of records maintained at Headquarters. Senior medical personnel are the custodians of restricted medical records maintained within postal facilities.

* * * * *

3. Section 262.4 introductory text is revised to read as follows:

§ 262.4. Records.

Recorded information, regardless of media, format, or physical characteristics, including electronic data, developed or received by the Postal Service in connection with the transaction of its business and retained in its custody; for machine-readable records, a collection of logically related data treated as a unit.

* * * * *

PART 265—RELEASE OF INFORMATION

4. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

5. Section 265.3(a) is revised to read as follows:

§ 265.3 Responsibility.

(a) *Custodian.* Official records are in the custody of the postmaster or other

head of a facility or department at which they are maintained, as defined at § 262.2(a). These custodians are responsible for responding in the first instance to requests from members of the public for Postal Service records.

* * * * *

6. Section 265.5 is revised to read as follows:

§ 265.5 Public reading rooms.

The Library of the Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260-1641, serves as public reading room for the materials which are listed in paragraphs (a) (2), (3), (4) and (5) of § 265.6 as available for public inspection and copying. Any such material created by the Postal Service on or after November 1, 1996, also will be available, as of November 1, 1997, in electronic format at the Postal Service's world wide web site at <http://www.usps.gov>.

7. Section 265.6(a) is revised to read as follows:

§ 265.6 Availability of records.

(a) *Records available to the public on request—*(1) *General.* Postal Service records are available for inspection or copying at the request of any person, in accordance with the provisions of this part, except as otherwise provided by law or regulations, including but not limited to paragraphs (b) through (g) of this section. Certain categories of records of particular interest are available on a continuing basis as provided in paragraphs (a) (2), (3), and (4) of this section and are listed in a public index as provided in paragraphs (a) (4) and (5) of this section. Access to other records may be requested on an individual basis in accordance with the procedures provided in § 265.7. Official records which are maintained on an electronic storage medium will normally be made available, in accordance with this part, as an exact duplicate of the requested original in a form readable by the human eye, such as a computer print-out. On request, records will be provided in a different form or format if they are maintained in the requested form or format or if they can be readily reproduced in the requested form or format.

(2) *Opinions.* All final opinions and orders made in the adjudication of cases by the Judicial Officer, Administrative Law Judges, and Board of Contract Appeals, all final determinations pursuant to section 404(b) of title 39, United States Code, to close or consolidate a post office, or to disapprove a proposed closing or consolidation, and all advisory opinions concerning the private express statutes

issued pursuant to 39 CFR 310.6, and all bid protest decisions are on file and available for inspection and copying at the Headquarters Library and at the Postal Service's world wide web site identified at § 265.5.

(3) *Administrative manuals and instructions to staff.* The manuals, instructions, and other publications of the Postal Service that affect members of the public are available through the Headquarters Library and at many post offices and other postal facilities. Those which are available to the public but are not listed for sale may be inspected in the Headquarters Library, at any postal facility which maintains a copy, or through the world wide web site identified at § 265.5. Copies of publications which are not listed for sale or as available free of charge may be obtained by paying a fee in accordance with § 265.9.

(4) *Previously released records.* Records processed and disclosed after March 31, 1997, in response to a Freedom of Information Act request, which the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records, are available for inspection and copying at the Headquarters Library. Beginning November 1, 1997, any such records created by the Postal Service on or after November 1, 1996, also will be available at the Postal Service's world wide web site identified at § 265.5. Records described in this paragraph that were not created by, or on behalf of, the Postal Service generally will not be available at the world wide web site. Records will be available in the form in which they were originally disclosed, except to the extent that they contain information that is not appropriate for public disclosure and may be withheld pursuant to this section. Any deleted material will be marked and the applicable exemption(s) indicated in accordance with 265.7(d)(3). A general index of the records described in this paragraph is available for inspection and copying at the Headquarters Library. [Beginning on or before December 31, 1999, the index also will be available at the Postal Service's world wide web site.]

(5) *Public index.* (i) A public index is maintained in the Headquarters Library and at the world wide web site of all final opinions and orders made by the Postal Service in the adjudication of cases, Postal Service policy statements which may be relied on as precedents in the disposition of cases, administrative staff manuals and instructions that affect the public, and other materials which the Postal Service elects to index

and make available to the public on request in the manner set forth in paragraph (a) of this section.

(ii) The index contains references to matters issued after July 4, 1967, and may reference matters issued prior to that date.

(iii) Any person may arrange for the inspection of any matter in the public index in accordance with the procedures of § 265.7.

(iv) Copies of the public index and of matters listed in the public index may be purchased through the Headquarters Library with payment of fees as listed in the index or as provided in § 265.9.

(v) Materials listed in the public index that were created on or after November 1, 1996, will also be available beginning November 1, 1997, in electronic format at the Postal Service's world wide web site at <http://www.usps.gov>.

(6) *Listings of employees' names.* With written request, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

* * * * *

8. Section 265.6(e)(1) is amended by revising the citation "paragraph (a)(5)" to read "paragraph (a)(6)".

9. Section 265.7(a)(2) is amended by revising the citation "§ 265.6(a)(5)" to read "§ 265.6(a)(6)".

10. Sections 265.7 (b) and (c), (d)(1), (e)(1) and (f) (1) and (2) are revised and sections 265.7 (d)(3) and (g) are added to read as follows:

§ 265.7 Procedure for inspection and copying of records.

* * * * *

(b) Responsibilities of the custodian.

(1) The custodian of the requested record is the person responsible for determining whether to comply with or to deny the request. A custodian who is not an Officer as defined in § 221.8 of this chapter, however, should not deny a request until he has obtained the advice of Chief Field Counsel. If denial of a request appears necessary, the custodian should seek advice as soon as possible after receipt of the request so as to provide adequate time for legal review. Denial must be made in accordance with paragraph (d) of this section.

(2) The custodian shall make the determination whether to release or deny the record(s) within 20 working days (i.e., exclusive of Saturdays, Sundays, and holidays) of receiving the request, and more rapidly if feasible. The custodian and the requester may, by mutual agreement, preferably in writing, establish a different response period.

(3) If a requested record cannot be located from the information supplied,

the requester should be given an opportunity to supply additional information and, if feasible, to confer with the custodian or his/her representative, in an attempt to provide a reasonable description of the records sought. If additional information is furnished, the request will be deemed to have been received by the custodian when sufficient additional information to identify and locate the record with a reasonable amount of effort has been received.

(4) The custodian shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the automated information system.

(5) The 20 working day response period allowed in paragraph (b)(2) of this section may be extended by the custodian, after consultation with the Chief Field Counsel or with the General Counsel if the custodian is at Headquarters, for a period not to exceed an additional 10 working days, except as provided in paragraph (b)(7) of this section, when, and to the extent, reasonably necessary to permit the proper processing of a particular request, under one or more of the following unusual circumstances:

(i) The request requires a search for and collection of records from a facility other than that processing the request.

(ii) The request requires the search for, and collection and appropriate examination of, a voluminous amount of separate and distinct records.

(iii) The request requires consultation:

(A) With another agency having a substantial interest in the determination of whether to comply with the request or

(B) Among two or more components of the Postal Service having substantial subject matter interest in the determination of whether to comply with the request.

(6) When the custodian finds that the additional time is required, he shall acknowledge the request in writing within the initial 20-day response period, state the reason for the delay, and indicate the date on which a decision as to disclosure is expected.

(7) If a request cannot be processed within the additional time provided by paragraph (b)(5) of this section, in spite of the exercise of due diligence, the custodian shall notify the requester of the exceptional circumstances preventing timely compliance and of the date by which it is expected that the determination will be made. The custodian also shall provide the requester an opportunity to limit the scope of the request so that it may be

processed within the extended time limit, or an opportunity to arrange with the custodian an alternative time frame for processing the request or a modified request. The custodian shall nonetheless make a determination on the request as promptly as possible.

(8) If a requested record is known to have been destroyed, disposed of, or otherwise not to exist, the requester shall be so notified.

(c) Compliance with request upon affirmative determination by custodian.

(1) When a requested record has been identified and is to be disclosed in whole or in part, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when and under what reasonable conditions, if any, including the payment of fees, the record will be available for inspection or copies will be available. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) Any fees authorized or required to be paid in advance by § 265.9(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.9(g).

(3) A custodian complying with a request may designate a representative to monitor any inspection or copying.

(d) Denial of request. (1) A reply denying a request in whole or in part shall be in writing, signed by the custodian or his designee, and shall include:

(i) A statement of the reason for, or justification of, the denial (e.g., records personal in nature), including, if applicable, a reference to the provision or provisions of 265.6 authorizing the withholding of the record and a brief explanation of how each provision applies to the records requested.

(ii) If entire records or pages are withheld, a reasonable estimate of the number of records or pages, unless providing such estimate would harm an interest protected by the exemption relied upon.

(iii) The name and title or position of the person responsible for the denial of the request (see paragraph (d)(2) of this section).

(iv) A statement of the right to appeal and of the appeal procedure within the Postal Service (described in paragraph (e) of this section).

* * * * *

(3) When information is deleted from a record that is disclosed in part, the custodian shall indicate, on the released portion of the record, the amount of information deleted, unless including that indication would harm an interest protected by the exemption relied on. The indication must appear, if technically feasible, at the place in the record where such deletion is made.

(e) *Appeal procedure.* (1) If a request to inspect or to copy a record, or a request for expedited processing of the request, is denied, in whole or in part, if no determination is made within the period prescribed by this section, or if a request for waiver of fees is not granted, the requester may appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260-1100.

(f) *Action on appeals.* (1) The decision of the General Counsel or his designee constitutes the final decision of the Postal Service on the right of the requester to inspect or copy a record, or to expedited processing of the request, as appropriate. The General Counsel will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 working days from the time of the receipt by the General Counsel. The 20 day response period may be extended by the General Counsel or his designee for a period not to exceed an additional 10 working days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the unusual circumstances set forth in paragraph (b)(5) of this section. The aggregate number of additional working days utilized pursuant to this paragraph (f)(1)

and paragraph (b) of this section, however, may not exceed 10.

(2) The decision on the appeal shall be in writing. If the decision sustains a denial of a record, in whole or in part, or if it denies expedited processing, it shall state the justification therefor and shall inform the requester of his right to judicial review. In the case of records withheld, the decision also shall specify any exemption or exemptions relied on and the manner in which they apply to the record, or portion thereof, withheld.

(g) *Expedited processing—(1) Criteria.*

A request for expedited processing of a request for records shall be granted when the requester demonstrates compelling need. For purposes of this paragraph, "compelling need" exists if:

(i) Failure of the requester to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or;

(ii) In the case of a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged federal government activity.

(2) *Request.* A request for expedited processing shall be directed in writing to the records custodian. The requester must provide information in sufficient detail to demonstrate compelling need for the records and certify this statement to be true and correct to the best of the requester's knowledge and belief.

(3) *Determination.* The records custodian shall make a determination of whether to provide expedited processing and notify the requester within ten days after the date of the

request for expedited processing. If the request is granted, the records custodian shall process the request for records as soon as practicable. If the request for expedited processing is denied, the written response will include the procedures at paragraph (d) of this section for appealing the denial.

11. Section 265.10 is revised to read as follows:

§ 265.10 Annual report.

A report concerning the administration of the Freedom of Information Act and this part will be submitted to the Attorney General of the United States on or before February 1 of each year, with the first such report, for fiscal year 1998, due on or before February 1, 1999. Data for the report will be collected on the basis of a fiscal year that begins on October 1 of each year. The Attorney General, in consultation with the Director, Office of Management and Budget, will prescribe the form and content of the report. The report will be made available to the public at the Headquarters Library and on the Postal Service's world wide web site at <http://www.usps.gov>.

12. Appendix A to Part 265—Information Services Price List is revised to read as follows:

Appendix A to Part 265—Information Services Price List

When information is requested that must be retrieved by computer, the requester is charged for the resources required to furnish the information. Estimates are provided to the requester in advance and are based on the following price list.

Service description	Price	Unit
Servers		
A. OS390 Servers:		
Batch or On-line Services	\$1,350.00	Hour.
Media Charge (Tape Produced)	25.00	Volume.
Print10	Page.
B. Production Servers:		
(Running UNIX or NT OS) On-line Services	155.00	Hour.
Print13	Page.
C. Personal Computers:		
On-line search	6.25	15 minutes.
Print13	Page.
D. Personnel Charges:		
Software Systems Services	81.00	Hour.
Programming Services	70.00	Hour.
Manual Unit Services	48.00	Hour.

Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[LA-41-1-7355, FRL-5899-8]

Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Correction of the Designation for Lafourche Parish

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On July 17, 1997, EPA published a proposed rulemaking to correct the designation of Lafourche Parish, Louisiana, to nonattainment for ozone (62 FR 38237). One adverse comment letter was received during the 30-day comment period, and the issues raised in that letter are addressed in this document. Pursuant to the Clean Air Act (the Act), which allows EPA to correct its actions, EPA is today correcting the designation of Lafourche Parish to nonattainment for ozone.

DATES: This action is effective on January 5, 1998.

ADDRESSES: Copies of the information relevant to this action are available for inspection during normal hours at the following location: Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Anyone wishing to review this document at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD-L), Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7219.

SUPPLEMENTARY INFORMATION:

I. Background

The specific rationale EPA used to correct the ozone designation of Lafourche Parish was explained in the proposed correction document (62 FR 38237, July 17, 1997) and will not be restated here. This document announces EPA's final action regarding the correction of Lafourche Parish to nonattainment for ozone.

II. Response to Comments

The EPA received an adverse comment letter dated August 15, 1997, from the Louisiana Mid-Continent Oil and Gas Association. The commenters believed that EPA either failed to consider or purposefully disregarded several factors. The EPA's responses to these comments are detailed below.

Comment: EPA failed to consider the odd shape of the parish and the location of the monitor with respect to sources in the parish.

Response: 40 CFR part 58, Ambient Air Quality Surveillance, Appendices D and E, describe EPA's monitoring network design and siting criteria for State or Local Air Monitoring Stations (SLAMS). The SLAMS make up the ambient air quality monitoring network which is required by 40 CFR 58.20 to be provided for in the State Implementation Plan (SIP). In general, the SLAMS monitor in Thibodaux was sited in accordance with 40 CFR part 58, Appendices C and D, to measure the maximum population exposure one could reasonably expect to occur in the Parish. The shape of Lafourche Parish and the location of the major emission points were taken into consideration by the State and EPA to determine the appropriate siting scales and monitoring objectives for ozone in Lafourche Parish.

Comment: EPA failed to consider the excellent compliance history of the Parish.

Response: The EPA considered the compliance history of Lafourche Parish, prior to and during 1995, as part of our evaluation and approval process for the Parish's ozone redesignation request. But despite the prior compliance history of Lafourche, the operative facts showed a violation of the standard that disqualified the area from redesignation to attainment. The language of section 107 (d)(3)(E)(i) and (d)(1)(A) provides that EPA may not redesignate an area unless the Administrator determines that the area has attained the standard. This is reinforced by other sections of the Act, including section 175A maintenance plan requirements, and section 172(c)(9) contingency measures. The EPA has long interpreted this language as requiring EPA to disapprove redesignation requests for areas that violate the standard while a redesignation request is pending. See Memorandum dated September 4, 1992, entitled Procedures for Processing Requests to Redesignate Areas to Attainment, p. 5; Pittsburgh-Beaver Valley nonattainment area (61 FR 19123, May 1, 1996); Richmond, Virginia (59 FR 22757, May 3, 1994); Birmingham, Alabama (62 FR 49154,

September 19, 1997), Northern Kentucky portion of Cincinnati-Hamilton nonattainment area (61 FR 50718, September 27, 1996), and Detroit-Ann Arbor, (60 FR 12459, March 7, 1995). See also the opinion of the United States Court of Appeals for the Third Circuit in *Southwestern Pennsylvania Growth Alliance v. Browner*, 121 F. 3rd. 106 (3rd Cir. 1997).

The Lafourche direct final approval notice itself stated: "If the monitoring data records a violation of the NAAQS before the direct final action is effective, the direct final approval of the redesignation will be withdrawn and a proposed disapproval substitute for the direct final approval." (60 FR 43021-22). Although such a violation was recorded during the comment period, EPA failed to withdraw the approval and substitute a disapproval, as it acknowledged would have been the appropriate course of action. The EPA's position is consistent with 40 CFR section 50.9, which states that the NAAQS for ozone is attained "when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million[] is equal to or less than 1, as determined by Appendix H." Appendix H explains the methodology for determining "attainment" of the ozone standard. If there are more than three exceedances over a three-year period at any of the monitoring sites, the area has not attained the standard.

The United States Court of Appeals for the Third Circuit, in evaluating EPA's disapproval of a redesignation request for an area that violated the standard while its request was pending, stated: "we accept the view that the EPA may not redesignate an area if the EPA knows that the area is not meeting the NAAQS. The EPA's redesignation of the Lafourche Parish redesignation was thus not proper." *Southwestern Pennsylvania Growth Alliance v. Browner*, 121 F.3rd at 114. The commenters also complained that 1995 was an unusually warm year. But even if this were the case, this provides no grounds for excluding quality-assured monitored exceedances of the ozone standard. The EPA's applicable regulations governing ozone attainment provide no basis for excluding data due to exceptionally hot weather. 40 CFR section 50.9 appendix D and H and part 58. See Birmingham, 62 FR 49154, and the discussion contained therein.

Comment: The EPA failed to consider Lafourche Parish's performance with respect to the new 8-hour ozone standard.

Response: Compliance with the new 8-hour ozone standard is irrelevant to