

CLIENT ALERT

NHTSA Successfully Defends Its Roof Crush Resistance Strength Requirements

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On March 28, 2013, the Sixth Circuit reinforced the high bar a petitioner faces in contesting rules issued by the National Highway Traffic Safety Administration (NHTSA), rejecting a trucking trade organization's challenge to 2009 roofing safety standards promulgated by the agency.

In *National Truck Equipment Association v. National Highway Traffic Safety Administration*, No. NHTSA-2009-0093 (6th Cir. Mar. 28, 2013), the National Truck Equipment Association (NTEA) challenged the legality of an increase in the weight limit of vehicles subject to roof crush resistance strength requirements under Federal Motor Vehicle Safety Standard (FMVSS) No. 216a, as applied to certain classes of vehicle manufacturers. NTEA's petition claimed that FMVSS No. 216a should not apply to "final-stage manufacturers" and "alterers" because, by expanding roof crush resistance requirements to these manufacturers, NHTSA acted in an arbitrary and capricious manner, contrary to the National Traffic and Motor Vehicle Safety Act of 1966, and improperly delegated its statutory authority. The Sixth Circuit rejected each of NTEA's arguments. In so doing, the Sixth Circuit afforded deference to NHTSA, but did not find the well-recognized *Chevron* analytical framework applicable.

Arbitrary and Capricious

In its ruling, the Sixth Circuit addressed the following question: "Was the process by which NHTSA promulgated FMVSS No. 216a arbitrary and capricious, or did NHTSA conduct its rulemaking proceedings in a sufficiently thorough manner?"

The Court relied upon the Administrative Procedures Act, and the United States Supreme Court's opinion in *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Company*, 463 U.S. 29 (1983), to find that its review turned on two questions: (1) "whether NHTSA amassed sufficient record evidence to support its conclusions"; and (2) "whether NHTSA properly relied on the factors Congress intended it to consider when promulgating a new safety standard." The Court answered both questions in the affirmative.

First, the Court noted, "it seems obvious to us that NHTSA promulgated the final rule at issue only after engaging in an exhaustive and well-considered decisionmaking process." In support, the Court cited several studies and reports on which NHTSA's rulemaking relied. The Court further found that NHTSA published FMVSS No. 216a mindful of the concerns NTEA's petition raised, as evidenced by various concessions NHTSA made in the final rule. The Court also rejected as inaccurate and irrelevant NTEA's assertion that NHTSA did not specifically assess the propriety of extending FMVSS No. 216a to final-stage manufacturers and alterers.

Ultimately, the Court found that in passing FMVSS No. 216a, NHTSA satisfied all procedural requirements. The Court observed that it

must defer to the agency when it has engaged in such an involved [investigative] process. Congress entrusted NHTSA with an important proactive regulatory mission, and it is not our role in the institutional scheme of things to

make that mission unnecessarily difficult to accomplish. Indeed, the agency's job is to promulgate standards and ours is simply to do so responsibly. To ask for more process in a situation like this would render NHTSA's standard-setting mission a practical impossibility.

Safety Act

In responding to NTEA's second argument, the Sixth Circuit assessed whether, "[s]etting aside the decisionmaking process, does FMVSS No. 216a fall short of the minimum substantive criteria prescribed in the Safety Act, or does it satisfy all three?" To meet the prescribed criteria, "any new safety standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms." The Sixth Circuit found FMVSS No. 216a to meet each requirement.

The Court found FMVSS No. 216a practicable because it "offer[ed] the regulated part[ies] a chance to demonstrate compliance," even though both NHTSA and the NTEA agreed that conducting the required testing was not a realistic option for the manufacturers at issue. For final-stage manufacturers, the Court found that pass-through compliance—a practice that has been successfully employed for years—is sufficient.

Delegation of Statutory Authority

Lastly, the Sixth Circuit decided "whether pass-through certification, as incorporated in FMVSS No. 216a, constitute[d] an improper delegation of NHTSA's statutory duties." According to the Court, the answer is "no." On this issue, the Court considered NTEA's argument to be based on a misunderstanding of the improper delegation doctrine. Most significantly, "NTEA fail[ed] to specify any particular power, conferred on NHTSA by Congress, that the agency has turned around and actively delegated[.]"

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