

Hypotheticals for Notice and Comment Rulemaking Procedures - Part II

- I. Hypothetical I - Add the following assumptions to the hypothetical on page 156:
 - A. Assume that the statute that EPA is acting under authorizes it to set ozone emission limits on consumer products at levels that are necessary to protect the environment;
 - B. Assume that when EPA proposed the rule, they were relying on several studies that indicated that air purifiers emitted high levels of ozone, but they did not identify or discuss those studies in the notice of proposed rulemaking;
 - C. Assume that when EPA issued the final rule, they did not discuss the comments raised by the medical, consumer and air quality associations.

What challenges would the manufacturers raise to EPA's final rule - procedural or otherwise - and how would EPA respond?

- II. Hypothetical II - In addition to the facts outlined above for Hypothetical I, assume that when EPA finalized the rule that set ozone limits for air purifiers, it did not discuss the studies regarding the level of ozone emissions from air purifiers or the dangers created by those emissions. What additional challenges could the manufacturers raise regarding the final rule?
- III. Hypothetical III: Look at the hypothetical on page 164. If you are representing the commenters who are challenging DOT's rule requiring safety belts on trains, on what basis would you argue that the rule should be invalidated?