

# *Substantive Judicial Review of Agency Actions*

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# Quick look back

- Last class – introduction to administrative law fundamentals
- *Definition of “agency”*
- “Rules” vs “Orders”, and informal vs. formal methods of action

	Rules	Orders (or Adjudications)
Formal	Rule by trial – APA section 556-557  Limited to parties; rarely used	Developing rules via case-by-case decisions in common law fashion  FERC, FCC
Informal	Notice-and-comment process  Vast majority of agency rulemaking activity	Agencies can choose how much process to give for informal orders, but Due Process Applies ( <i>Matthews v. Eldrige</i> )

# Agency Rulemaking Processes



- Congressional Review Act of 1995
  - 60 days to report new rule to Congress
  - Congress can pass resolution to disapprove
  - NO FILIBUSTER
  - Resolution subject to veto
- Executive Order 12,866 (1993)
  - Planning + Review
  - Including cost-benefit analysis per OMB Circular A-4
  - Role of OIRA and OMB



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# The Zoonotic Disease Prevention Initiative



# Substantive Judicial Review of Administrative Rules

- Key focus, again, is Administrative Procedure Act
- Section 702 – jurisdictional platform for review
  - “a person suffering a legal wrong” from “agency action”
  - “person adversely affected or aggrieved by agency action within the meaning of a relevant statute”
- Section 706(2)(A) – “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”
- So what’s NOT included?

So How  
Would You  
Handle a  
Court  
Challenge to  
a Complex  
Rule?





# *U.S. v. Nova Scotia Food Products*

- Who decided, and when?
- What evil did the agency target to solve?
- *How* did the agency reach its decision?
- How did the agency justify its decision to the court?
- What did the Second Circuit rule?





# *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co.*

- What statute kicked off this fight?
- How did the Department of Transportation carry out Congress' statutory directive?



## ***Section 208 Timeline***

1967 Original DOT rule for safety belts

1969 Proposed rule for passive restraints

1970 Revised Standard 208

1974 Motor Vehicle and Schoolbus Safety Act

1976 Coleman suspends rule and orders demo

1977 Adams stops demo; air bags and passive

1981 Lewis reopens rule

Lewis rescinds passive restraint rule



## Key Questions from *State Farm*

- What standard of review did the U.S. Supreme Court use to review the DOT's vacillating decisions?
- What exactly did DOT get wrong in its ultimate decision to withdraw the standard?
- Where did the Court rule 9-0, and 5-4 – and why?
- The reverberations of dissent

# Elections Have Consequences

The agency's changed view of the standard seems to be related to the election of a new President of a different political party. It is readily apparent that the responsible members of one administration may consider public resistance and uncertainties to be more important than do their counterparts in a previous administration. **A change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations.** As long as the agency remains within the bounds established by Congress, it is entitled to assess administrative records and evaluate priorities in light of the philosophy of the administration.





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