I. INTRODUCTION

The passive restraint system controversy is still alive despite the Department of Transportation's recent efforts to do away with it. After almost twenty years of debate and an "extremely complex" legal history, the battle continues to rage. The controversy centers around the requirements of Federal Motor Vehicle Safety Standard 208 (Standard or Standard 208). After many revisions, this Standard finally gave automobile manufacturers until September 1, 1983 to equip all automobiles with passive restraint systems, but, early in 1981, Standard 208 was revoked.

In *Motor Vehicle Manufacturers Association v. State Farm Mutual*, the Supreme Court reviewed the rescission, concluded that it was "arbitrary and capricious," and remanded the case to the lower court with directions to remand the matter to the National Highway Traffic Safety Administration (NHTSA). The arbitrary and capricious standard has been applied often in

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1 A passive restraint system consists of safety equipment built into a motor vehicle which requires no action on the part of the occupant to operate. The two systems which were mandated in Federal Motor Vehicle Safety Standard 208 were the airbag system and the detachable automatic seatbelt system. Airbags are fabric cushions that are immediately filled with gas when a collision occurs. An automatic seatbelt is attached at one end of the door of the vehicle and at the other end between the back and bottom seat of the vehicle. The belt moves out of the way when the door is opened and automatically moves into place when the occupant is seated. There were several approved designs of this system and each required an emergency release in case an occupant was trapped inside the vehicle after a collision. See 48 Fed. Reg. 48,622, 48,626 (1983) (to be codified at 49 C.F.R. § 571).


4 49 C.F.R. § 571.208 (1981). The stated purpose of the Standard was to reduce deaths and injuries caused by motor vehicle accidents. To accomplish this, the Standard set out performance requirements which were to protect occupants in case of accidents.

5 For a summarized history of Standard 208, see infra notes 13-38 and accompanying text.


7 103 S.Ct. 2856 (1983).

8 Id. at 2874.

reviewing the promulgation of an agency rule. The Supreme Court has now held that this standard must also be applied to an agency’s rescission of a rule.\textsuperscript{10}

This casenote will summarize the legislative and political history\textsuperscript{11} of Standard 208. The casenote will then analyze the Supreme Court’s recent decision in \textit{Motor Vehicle Manufacturers Association v. State Farm Mutual}.\textsuperscript{12} It will conclude by considering the judicial review of administrative rulemaking and how the Court’s decision will affect such review in the area of rescission of an agency action.

\section*{II. HISTORICAL BACKGROUND OF STANDARD 208}

\subsection*{A. Legislative Action}\textsuperscript{13}

Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966 (Act)\textsuperscript{14} for the express purpose of reducing traffic accidents and the large number of deaths and injuries resulting from those accidents.\textsuperscript{15} The Act authorized the Secretary of Transportation\textsuperscript{16} to establish appropriate Federal Motor Vehicle Safety Standards.\textsuperscript{17} The Secretary was also given the authority to "amend or revoke any Federal Motor Vehicle Safety Standard established under [the Act]."\textsuperscript{18}

The Act incorporated the standard of judicial review under the Administrative Procedure Act (APA)\textsuperscript{19} of all "orders establishing, amending, or revoking a Federal Motor Vehicle Safety Standard."\textsuperscript{20} Under the APA, a court may set aside an agency ruling which is arbitrary, capricious, unreasonable or an abuse of discretion.\textsuperscript{21}

\begin{footnotes}
\item[10]103 S. Ct. at 2857.
\item[11]A complete analysis of the legislative history of the Standard is beyond the scope of this article. The history of the Standard is "extremely complex." 680 F.2d at 209. It "has been the subject of approximately 60 notices of proposed rulemaking, hearings, amendments, and the like between 1969 and 1981." Id. There have also been several adjudications concerning attempts "to control the evolution of the regulations." Id.
\item[15]Id.
\item[16]In 1970, Congress created the National Highway Traffic Safety Administration. The duties of the Secretary of Transportation under 15 U.S.C. §§ 1391-1431 (1982) were delegated to the Administrator of the NHTSA. 49 C.F.R. § 1.50(a) (1979).
\item[18]Id. at § 1392(e). (Emphasis added).
\item[21]Id. at § 706(2) (A).
\end{footnotes}
In 1967, the Department of Transportation issued Standard 208 which addressed the protection of motorists involved in accidents. The original Standard only required that manual seatbelts be installed in all passenger cars.

When it was determined that approximately eighty percent of motor vehicle occupants were not using the manual belts, the Department of Transportation turned to forced safety requirements. Standard 208 was amended in 1970 to include passive restraint requirements. These were required to be installed in all cars after August 15, 1975. In the interim, manufacturers could install either passive restraint systems or ignition interlock systems with shoulder and lap belts. The amended Standard was challenged by the Chrysler Corporation and other automobile manufacturers. The Sixth Circuit Court of Appeals reviewed the Standard and found substantial evidence to support the agency ruling.

In 1975, the date for mandatory compliance was extended, but before the rule could ever take effect, Secretary of Transportation William Coleman initiated a new rule indefinitely extending the existing options. The Secretary was concerned with expected public resistance to the automatic restraint systems and proposed a demonstration project to convince the public of the safety benefits of the systems. Coleman’s successor, Brock Adams, however, decided the demonstration project was unnecessary and issued a new passive restraint requirement. This ruling required manufac-

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27Id.
28An ignition interlock system prevents starting the vehicle if the belts are unconnected. A “continuous buzzer” system was another option. After it appeared that the industry was using only the ignition interlock option in virtually all its cars, Congress amended the Act in 1974 to prohibit this option in satisfying the requirements of the Act. 48 Fed. Reg. 48,622, 48,624, 15 U.S.C. § 1410 b(b) (1982).
29Chrysler Corporation v. Department of Transportation, 472 F.2d 659 (6th Cir. 1972).
30Id.
33Id.
35Up to 500,000 cars were to be involved in the demonstration.
37Modified Standard 208 called for a phasing-in of the systems. Large cars would be required to have passive restraint systems by model year 1982, mid-size cars by model year 1983, and compacts by model year 1984. 42 Fed. Reg. 34,289, 34,296 (1977) (codified at 49 C.F.R. § 571.208). Congress could have vetoed the order but did not choose to do so. The ruling was also upheld on review by the District of Columbia Circuit Court of Appeals. Pacific Legal Foundation v. Department of Transportation, 593 F.2d 1338 (D.C. Cir. 1979).
turers to install, at their option, either an airbag system or a detachable automatic seatbelt system. The issue seemed to be finally settled.

B. Executive Action

Soon after the Reagan administration entered the White House, action was taken by Secretary of Transportation Andrew Lewis to defeat Standard 208. Even before the 1980 presidential election, candidate Reagan promised to rescind the rule. While campaigning in Michigan, Reagan promised voters to "close down the Federal Auto Safety programs." After only eight days in office, the new President issued a memorandum, followed by an Executive Order which postponed the effective date of all major agency regulations which were pending at the time.

The NHTSA responded to the presidential order by extending the passive restraint requirements for one more year. Then, on October 29, 1981, the agency rescinded the rule altogether, never mentioning the Executive Order or the degree to which its decision would affect the ailing automobile industry.

C. Judicial Action

What had begun as a legislative action had now seemingly turned into a political action involving the executive branch of government. At this point, the courts became involved in the controversy. There was no question that the courts could review an agency ruling; this was settled law. The question that remained was whether and by what standard the courts could review an agency's rescission of its own rule.

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38See supra, note 1 for a description of the airbag and automatic seatbelt systems.
40Note, 14 U. Tol. L. Rev., supra note 13 at 1108.
41Exec. Order No. 12,291, 3 C.F.R. § 127 (1982), reprinted in 5 U.S.C. § 601 (1982). A "major" regulation was one which would have an annual economic effect of 100 million dollars or more. 3 C.F.R. at § 127 (b)(1) (1982). Other criteria for determining whether a regulation was major or not included the possibility of a significant increase in costs to the consumer or manufacturer or the possibility of adverse effects on competition within or outside of the United States. Id.
44See infra, notes 63-70 and accompanying text.
455 U.S.C. § 706 (1982) articulates the scope of judicial review of administrative procedure in general: To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of agency action. The reviewing court shall:
   (1) Compel agency action unlawfully withheld or unreasonably delayed; and
   (2) hold unlawful and set aside agency action, findings and conclusions found to be
      (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
      (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
      (D) without observance of procedure acquired by law;
      (E) unsupported by substantial evidence . . . or
      (F) unwarranted by the facts . . .
Judicial review of agency rulemaking is based primarily on the Administrative Procedure Act, which reflects a philosophy of a partnership between courts and agencies. The collaboration between the two is necessary to further justice and public policy. The purpose of judicial review is to assure the "even-handed application of standards [to] preserve the essence of constitutional safeguard against arbitrariness."

Many cases have discussed the arbitrary and capricious standard of judicial review. A rule has been determined to be arbitrary and capricious if; the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence . . . or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Although administrative agencies do not establish rules which are always intended to last forever and an agency may change its rules according to the demands of changing circumstances, the agency must study all the relevant circumstances and give a sufficient reason for its action by showing a "rational connection between the facts and the choice made." A decision will be upheld even if not entirely clear, as long as the agency's path may be reasonably discerned. A court will decide whether the decision was based on an examination of all the relevant data and whether there has been an abuse of discretion or a clear error of judgment. The agency must provide some reasoned analysis to justify its decision.

III. THE STANDARD OF REVIEW FOR AN AGENCY RESCISSION

The NHTSA rescinded the passive restraint requirement in October, 1981, maintaining that there was no longer any reason to believe that the passive restraint requirements would be effective as safety measures and that,

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4Id.
6Id. at 295-96.
7Id. citing Yakus v. United States 321 U.S. 414 (1944).
8See supra note 9.
9103 S.Ct. at 2867.
*Id. at 285.
in any case, the high cost of implementing the requirements (approximately $1 billion) certainly outweighed any possible safety benefits. The NHTSA attributed this to its finding that the automobile industry intended to use automatic seatbelts as opposed to airbags in ninety-nine percent of its new cars and that these seatbelts were detachable. The NHTSA concluded that so many car owners would detach the seatbelts that the devices would be virtually ineffective in reducing the number of deaths and injuries occurring as a result of automobile accidents.

The NHTSA also expressed concern with public opinion in regard to the Standard. The agency felt that the Standard would be regarded by consumers as an ineffective regulation. It stated that the result would be a "poisoning [of] popular sentiment toward efforts to improve occupant restraint systems in the future." Finally, the NHTSA concluded that amending the Standard was not a reasonable alternative due to such factors as cost, public acceptance and safety.

An action was brought in circuit court by State Farm Mutual Insurance Company and the National Association of Independent Insurers. The plaintiffs' petitions asked for a review of the rescission, arguing that the proposed passive restraint systems had been shown to be effective safety measures and that the increased benefits far outweighed the costs. State Farm further argued that even if the NHTSA found the detachable passive belts to be ineffective, the agency erred in rescinding the rule without considering an amendment requiring nondetachable passive belts.

The court of appeals held that the rescission was arbitrary and capricious for three reasons. First, it felt that there was insufficient evidence to support NHTSA's finding that an increase in seatbelt usage as a result of the Standard could not be reasonably predicted. Second, the court cited NHTSA's failure to consider nondetachable belts as a possible alternative. Third, the court questioned the agency's failure to consider requiring airbags as another possible alternative. It also found that NHTSA's discretion in rescinding its own
rules was restricted by congressional reaction to the passive restraint issue. The NHTSA was then given thirty days to submit a schedule for resolving the inquiries raised in the circuit court's opinion.

The NHTSA informed the court that the original passive restraint requirements under Standard 208 could not be implemented before September 1985. The agency appealed its case to the Supreme Court. On November 8, 1982, the Supreme Court granted certiorari and ten days later the court of appeals entered an order recalling its mandate, pending review by the Supreme Court.

In the Supreme Court, Petitioner, Motor Vehicle Manufacturers Association contended that an agency rescission should be reviewed by the same judicial standard which would be used to review an agency's refusal to promulgate a rule in the first place. The standard for agency inaction, Petitioner contended, would be much narrower than the standard for agency rulemaking which is the traditional arbitrary and capricious test.

The Supreme Court in a majority opinion by Justice White held that the rescission was arbitrary and capricious. The agency had failed to present evidence sufficient to support the action and had additionally failed to consider alternatives such as airbags and nondetachable automatic seatbelts which had also been proven to be effective safety measures in the course of testing conducted by the NHTSA and the Department of Transportation.

The Court based its holding on the National Traffic and Motor Vehicle Safety Act of 1966 (Act) which expressly provides that "the procedural and judicial review provisions of the [Federal] Administrative Procedure Act 'shall apply to all orders establishing, amending, or revoking a federal motor vehicle safety standard.'" The Court reasoned that because the Act had equated "revoking" with "establishing" a rule under the judicial review provis-
sion, it was Congress’ intention that the rescission of a rule be judged by the arbitrary and capricious standard described in the Federal Administrative Procedure Act. Therefore, rescission of a rule is not to be judged, as Petitioner claimed, by the same standard which a court may review agency inaction.

This is not to say a regulation may never be revoked. Rescission is permissible if supported by good reason. An agency “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”

The Court felt there was no sufficient evidence to support NHTSA’s finding that the detachable seatbelts would be ineffective. The agency rejected evidence obtained in studies of drivers of automobiles equipped with the automatic seatbelts which showed that belt usage increased more than one hundred percent over the usage rate with manual belts. The Court recognized that it was within an agency’s discretion to reject field studies which the agency felt were too general or otherwise inaccurate. In this case however, the Court felt that the agency could not reasonably say that usage rates would not increase at least enough to cover the cost of the automatic belt system. Evidence and common sense overwhelmingly pointed to an increase in usage.

After concluding the rescission was arbitrary and capricious, the Court gave two basic reasons why further consideration of the Standard was required by the agency. The first reason dealt with the agency totally ignoring the possibility of requiring airbags as an alternative. The second reason was the agency’s failure to consider nondetachable automatic seatbelts as another possible alternative.

Standard 208 specifically required automatic seatbelts, airbags, or a combination of the two to be installed in all passenger cars. According to NHTSA, the “overwhelming majority” of automobile manufacturers planned

\[\text{References:} \]
to use the belt system rather than the airbag system. It then gave its reasons for concluding the belt system would be ineffective. Despite the undisputed evidence that airbags could save thousands of lives, the agency failed to consider the logical alternative of requiring airbags in all passenger cars. The Court determined that the agency could not revoke the Standard based solely on the auto industry's preference for an ineffective seatbelt design if that Standard could be satisfied by another option embodied in the statute.

The agency did advance some arguments for not requiring non-detachable belts, but the Court also rejected NHTSA's reasoning in this area. NHTSA voiced its concern that these devices might make extrication of an occupant from his car more difficult and that this would frighten many people who believed they would be trapped by the belt in an accident. NHTSA also stressed the strong possibility that many motorists would resent being "forced" to wear seatbelts thus triggering strong adverse public reaction to the requirement. The Court cited the emergency release mechanisms which would be used with the nondetachable belts and questioned the agency's failure to show that these devices were ineffective in any way, especially since, in 1978 the agency had found them totally satisfactory.

Justice Rehnquist wrote an opinion concurring in part and dissenting in part, in which he was joined by Chief Justice Burger, Justice Powell and Justice O'Connor. He agreed with the majority that the airbag and non-detachable seatbelt requirements were unreasonably discarded by NHTSA without explanation but he disagreed that NHTSA had failed to adequately explain its reasons for rescinding the detachable seat belt requirements. Justice Rehnquist noted that an agency may reasonably reject a study which it feels does not support a logical conclusion. Further, he stated that, though the agency's reasoning was by no means perfect, it was certainly adequate.

[^1]: 103 S.Ct. at 2869, 46 Fed. Reg. 53,419, 53,421 (1981). The NHTSA found that only one percent of the manufacturers planned to install airbags.
[^2]: See supra notes 58-62 and accompanying text.
[^3]: The agency still acknowledges the "life-saving potential of the airbag." This fact is not in dispute. In fact, the airbag's proven effectiveness has withstood the "equivalent of war" on the part of the automobile industry for more than a decade. 103 S.Ct. at 2869-70 (noting NHTSA Final Regulatory Impact Analysis at XI-4 (App. 264)).
[^4]: The Court states that "[n]ot one sentence of its rulemaking statement discusses the airbag only option." 103 S.Ct. at 2869.
[^5]: Id. at 2870.
[^8]: Id. at 2873.
[^9]: 103 S.Ct. at 2873.
[^10]: Id.
[^12]: 103 S.Ct. at 2874.
[^13]: Id.
The dissent also alluded to the role of the President in the rescission of Standard 208. Justice Rehnquist mentioned that "[t]he agency's changed view of the [S]tandard seems to be related to the election of a new President." However, he was quick to note that this was not necessarily reason to judge the rescission of an agency ruling to be arbitrary. He stated that the election of a new President may signify that the voters wish to have an agency reappraise its views in a particular area and that this was a reasonable basis for such reappraisal. The agency could reconsider a rule as long as it remained within the bounds established by Congress.

IV. Analysis

A. Legal Implications

It remains to be seen how the courts will apply the revocation standard of judicial review articulated in Motor Vehicle Manufacturers Association. The case could be interpreted very narrowly, somewhat narrowly, or very broadly. A very narrow interpretation would apply the standard only to agencies acting under a statute which expressly provides, as was the case here, for judicial review under the APA of the revocation of an agency action. Such an interpretation would be favorable to those who are critical of the expansion of judicial review of agency actions.

A less narrow interpretation and most likely the one intended by the Court would apply the standard to revocation of a rule by any agency that was covered by the APA. The APA did not specifically refer to "rescission" of a rule in its terminology but used the word "action." Because a rescission could logically be considered an "action" the standard would seemingly apply.

A very broad interpretation of this case would cover all agency rescissions without regard to APA limitations. This interpretation is unlikely since the Supreme Court relied heavily on statutory language in support of its holding. Furthermore, there has been much criticism recently of the extension of judicial review of agency decision-making. Many feel that judicial review has gone too far, severely hampering any action by governmental agencies by re-

105 Id. at 2875.
106 Id.
107 Id.
111 5 U.S.C. § 204 (1982). All agencies are not covered by the APA.
112 See Gifford, Administrative Rulemaking and Judicial Review: Some Conceptual Models, 65 MINN. L. REV. 63 (1980). The author notes that extensive judicial review of agency actions is not only time-consuming and expensive but it can severely hamper the effectiveness of administrative agencies. Additionally, the courts must bear a greater burden in having to review almost every action made by these agencies.
quiring detailed reasoning and analysis for every move made by an agency.\textsuperscript{113}

In spite of these interpretive problems, the decision in \textit{Motor Vehicle Manufacturers Association} was proper. Revoking an important rule which has gone through years of scrutiny, debate and change without giving a logical and reasonable explanation for such revocation would seem to be inconsistent with the entire concept behind administrative agencies and the rulemaking process. If any agency could rescind a rule simply because it was unpopular with a particular group, many important and worthwhile regulations might be arbitrarily revoked. Certainly the executive branch of government should not have such power. The public has a right to know the reasons and policies behind the promulgation of rules as well as the reasons for rescinding these rules. Without judicial review of administrative rule rescission, an agency's power would go unchecked. This result would seem to be directly contrary to the constitutional concept of governmental checks and balances.

\textbf{B. Political Implications}

An interesting effect of this case is the judicial veto of what was, more or less, an executive act. As noted before, Justice Rehnquist tried to soften the blow in his discussion of the political aspects of the issue. His point was that an agency may evaluate its priorities based on the philosophy of the current administration as long as it does not overstep "the bounds established by Congress."\textsuperscript{114} However, it is obvious that the decision in \textit{Motor Vehicle Manufacturers Association} will certainly prevent an administration from arbitrarily revoking an agency ruling simply because the administration has a different philosophy.

\textbf{V. Conclusion}

The decision in \textit{Motor Vehicle Manufacturers Association} has kept alive the long and complicated controversy surrounding mandatory passive restraint systems in passenger cars.\textsuperscript{115} The holding has also brought agency rescissions of


\textsuperscript{114}103 S.Ct. at 2875.

\textsuperscript{115}In response to the Supreme Court decision in \textit{Motor Vehicle Manufacturers Association}, the NHTSA issued a Notice of Proposed Rulemaking on October 19, 1983. 48 Fed. Reg. 48,622 (1983). The notice listed the alternatives available to the Department in promulgating a final rule on the subject of passive restraint systems. Action was to be taken by the agency on or before April 12, 1984 in the form of either a final decision or a supplemental notice of proposed rulemaking. In addition to the possibilities of amending, retaining or rescinding the occupant restraint requirements, the agency noted three additional alternatives. These were (1) conducting a demonstration program, (2) seeking mandatory state manual seatbelt usage laws, (3) seeking legislation requiring auto makers to provide consumers with automatic belt or airbag options. The notice asked for public comment before December 19, 1983, listing 91 questions to be responded to by consumers, manufacturers and all other interested parties.
rulings within the scope of judicial review under the arbitrary and capricious standard.

The NHTSA is left with several options. The agency may still rescind the rule if it can supply adequate reasons for such a move in accordance with the Court’s directives. It may also reinstate the rule as it stood before the rescission. Finally, it could amend the rule as long as it explained its actions.116

The decision in Motor Vehicle Manufacturers Association clearly seems to be appropriate for that case. Unfortunately, to a great extent the result seemed to be based on the applicable statutory language. This reasoning left little direction for reviewing courts in future cases where an enabling statute has failed to provide for judicial review. A less factually appropriate situation might have been a better subject for Supreme Court scrutiny. As it stands, it is unclear how broadly the decision is to be interpreted. There are still many unanswered questions, not the least of which is, will passive restraint systems ever become mandatory?

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