Introduction to Administrative Process

Final Examination

Professor Field Spring 2003

Instructions

This is a three-hour, open-book exam. You may consult any written materials. Do not discuss the exam with others.

- **Put your exam number and answers on the sheet provided.**
- **Note that questions in Part I are worth four times as much as those in Part II. Do not waste time answering more questions than you need to!**

Part I: Multiple choice

[80 points]

*Answer **only** 20 of 24 questions* (4% each)

"Agency," "Court," or "Party," for example, means a *specific* agency, court or person; "agency," "court" or "party" does not. "Statute" does not include the APA.

Enter the letter for the most correct concluding phrase or statement **on the answer sheet**.

1. When Statute provides for no review of Agency actions, courts assume that:
   A. they are reviewable.
   B. they are not reviewable.
   C. only procedural issues are reviewable under the APA.
   D. only substantive issues are reviewable under the APA.

2. When Statute says that Agency review "may" be sought in a particular court, that:
   A. does not foreclose review under APA § 706(2)(B) in other courts.
   B. does not foreclose review under APA § 706(2)(D) in other courts.
   C. is likely to foreclose review in other courts under APA § 702.
   D. is very likely to foreclose review in other courts.

3. When agency adjudications are allegedly influenced by the views of politicians, courts:
   A. review as soon as possible to avoid potentially unnecessary litigation expenses.
   B. never permit adjudicators affected by political considerations to sit.
   C. may regard that as an unavoidable aspect of government.
   D. do not hesitate to enjoin unduly vocal politicians.

4. If two agencies have arguably conflicting views of the same subject matter:
   A. the Department of Justice often sorts it out.
   B. the decision of the first agency to act will prevail.
   C. the agency with the most general jurisdiction usually controls.
   D. interagency memoranda of understanding always resolve critical conflicts.

5. In challenges to agency adjudications, courts:
   A. lack jurisdiction until agency heads have chosen not to act.
   B. have jurisdiction only if all intramural appeals have been taken.
   C. need not await intramural review unless it is required by a statute or rule.
   D. never entertain collateral actions before available intramural action is complete.

6. If final Agency rules may be challenged by any party within 30 days:
   A. participants may raise only issues addressed by themselves.
   B. participants need not address issues themselves to raise them on review.
   C. courts usually entertain direct challenges by any clearly affected person.
   D. courts usually entertain APA § 706(2)(D) challenges in enforcement proceedings.

7. Summarily finding misconduct "egregious," Agency suspended a license for 90 days. Suspensions for such misconduct have heretofore been 45 days. On review, a court is likely to:
   A. allow agency counsel to supply reasons for the stiffer penalty.
   B. reduce the suspension to 45 days.
   C. reduce the suspension to 60 days.
   D. remand.

8. Statute permits informal Agency adjudications to be, alternatively, reviewed in circuit or district courts. Only the latter allows the record to be supplemented. Typically, such review in the:
   A. courts of appeal would be under § 706(2)(A).
   B. courts of appeal would be under § 706(2)(E).
   C. courts of appeal would be under F.R.C.R 52(a).
   D. district courts would be under § 706(2)(F), despite supplementation.

9. Director serves under Secretary. The latter may review Director's decisions:
   A. because, as Director 's boss, Secretary has inherent authority to do so.
   B. as the President may review the decisions of either.
   C. if made in the name of Secretary.
   D. if made in the name of Director.

10. Agency's published Rule allows 60 days to respond to certain actions. If, despite that, Party is required to respond within 45 days, a court would hold that Agency:
   A. may, absent prejudice, impose the shortened period.
   B. must provide 30 days notice before such a rule can be changed.
   C. may change such rules only after notice and comment rule making.
   D. must provide Federal Register notice before such a rule can be changed.

11. If Agency relied heavily on hearsay in ruling against Party, its decision should be:
   A. reversed because subpoenas are generally unavailable to parties in formal adjudications.
   B. reversed because Party had no opportunity to cross examine.
   C. upheld only if other evidence of record fully supports it.
   D. upheld despite that.

12. In certain adjudications, Agency rules provide for a procedure that does not conform to APA § 556(b). If subjected to a facial challenge, those rules would be most likely to fail:
   A. if the relevant statute calls for "substantial public hearing."
   B. if the relevant statute calls for a "hearing on the record."
   C. for not conforming to the APA.
   D. under the 5th Amendment.

13. If its statute does not define a key term, e.g., "employee," Agency may, in a party-specific proceeding:

A. not define it for the first time and apply it retrospectively.
B. define it, but only for prospective application.
C. define and apply it for the first time.
D. not define it for the first time.

14. In 1998, Congress gave Board one year to adopt, after "hearing," "safety" standards for "common hand tools". To conserve resources and avoid § 706(2)(D) problems, Board should:

A. use notice-and-comment rule making to set standards.
B. convene a party-specific proceeding to set standards.
C. promptly publish its standards as policy guidelines.
D. use formal rule making to set standards.

15. See Q 14. Board adopted a set of rules in 2001. Statute does not address challenges to Board's rules. If Toolmakers Ass'n had nevertheless sought review in a court of appeals as soon as the rules became final, the Court:

A. was obligated to dismiss because the challenge is not ripe.
B. was likely to dismiss because Statute does not provide for review
C. lacking jurisdiction, might have transferred the case to a district court.
D. should have invalidated those rules as they were adopted after Statute's deadline.

16. See Q 15. In 2002, Board found Wahr's hammers not to conform to its rules. After Wahr filed a complaint claiming that Rule irrationally discriminates against its type of hammers, Board reversed itself and affirmatively certified them. If Wahr also challenges Rule, a court:

A. may consider its facial validity.
B. must dismiss the challenge to Rule as moot.
C. may dismiss because the challenge to Rule is not ripe.
D. must dismiss because Party waited too long to challenge Rule.

17. See Q 16. After Board certified its hammers, Wahr filed a § 553(e) petition demanding that it investigate whether Competitor's hammers conform. If Board refuses, citing the press of more important business, a court is most likely to dispose of a challenge by holding that:

A. Wahr lacks standing to challenge Board's decision.
B. Board must, under 555(e), supply better reasons.
C. Board exercised unreviewable discretion.
D. the matter is not ripe for disposition.

18. See Q 17. To cover all bases, Wahr also filed a private suit seeking a court order requiring Competitor to have its hammers explicitly certified. In such circumstances, courts:

A. usually find regulatory statutes to create implied private causes of action.
B. rarely find regulatory statutes to create implied private causes of action.
C. often collaterally review agency denials of relief.
D. dismiss for lack of primary jurisdiction.

19. See Q 17. When Wahr found Competitor to be labeling its hammers as "Board Certified," it filed suit under § 43(a)(1)(B) of the Lanham Act. (In such cases, courts may, e.g., enjoin false statements.) A Board guideline states that to be regarded as "certified" goods need only conform to its standards. Courts may apply that definition:

A. if defining such terms is within Board's delegated authority.
B. only if Board's Guideline is the product of formal rule making.
C. despite contrary indications in the statute (or legislative history).
D. only if the statute can be fairly construed to say essentially the same thing.

20. See Q 14. In the tool-safety statute, Congress also required hammer labels to indicate head composition. Board experts, however, concluded that safety would not be thereby served. Rule instead requires labels to specify shaft composition. In a challenge by Toolmakers Ass'n, a court:

A. may find that Congress cannot delegate the power to define "safety."
B. must consider whether litigation affidavits support the need for Rule.
C. will uphold Rule unless the expert assessment has not been published.
D. will require Rule's hammer labeling requirements to be expanded.

21. See Q 14. Board's Chair lobbied hard for the tool-safety statute. Once it passed, she gave several speeches saying, e.g., "We need to move swiftly. Too many eyes have already been destroyed by brittle screwdriver and hammer shafts." Toolmakers Ass'n immediately challenged her rulemaking participation. After other Board members held that she need not recuse herself:

A. courts would regard her statement as within the range of permissible bias.
B. most courts would regard her statement as indicating impermissible bias.
C. no court would hesitate to review such a preliminary determination.
D. no court would review this decision at this time.

22. See Q 14. Board's Chair rubs newly-elected President the wrong way. Moreover, President wants to reward a political crony by appointing him to Chair's position. She may do so:

A. under no circumstances.
B. regardless of what Congress may have tried to say about the matter.
C. if Congress has granted explicit authority to make such appointments.
D. unless a statute explicitly limits presidential authority to remove Chair.

23. Specified Information is exempt from disclosure under Statute as interpreted by Rule. If Person seeks documents that Agency regards as containing (exempt) Information, a court:

A. should proceed to the merits.
B. must dismiss the challenge if Person is not a U.S. citizen.
C. should first determine whether Person may sue under FOIA.
D. should first determine whether Person may sue under Statute.

24. See Q 23. After all jurisdictional requisites are met, a court next:

A. must examine Agency's application of Rule under APA § 706(2)(E).
B. should independently interpret 5 U.S.C. § 552(b)(3).
C. should examine Rule under APA § 706(2)(C).
D. must independently interpret Rule.

Part II: Matching
[20 points]
*Answer **only** 20 of 24*

Related *terms* tend to be grouped. Lettered definitions match only one term. Please enter the **best** letter in the corresponding space **on the answer sheet.**

1. Standing
2. Exhaustion
3. Finality
4. Ripeness
5. Non-statutory review
6. Primary jurisdiction
7. Mootness
8. Formal
9. Informal
10. Hybrid
11. Impartial
12. Dependent vs. independent
13. Rule making
14. Order
15. Hearing
16. Retroactive
17. Permissible delegation
18. Unpublished
19. Bar exam
20. Clear and convincing
21. Clearly erroneous
22. C.F.R.
23. Looseleaf service
24. Trade association

A. Proceeding that normally requires review under APA § 706(2)(A).
B. Resolution of preliminary matters does not usually satisfy this APA requirement.
C. Standard of review.
D. Does not mean ignorant or lacking in emotion.
E. May or may not be conferred by the term "any person."
F. Does not bar consideration of issues underlying disputes resolved before appeal.
G. Adjudication's usual impact.
H. Intramural appeals may be needed to satisfy this requirement.
I. May justify awaiting resolution of a related agency proceeding.
J. Only one agency may require.
K. Unlikely to hinder early facial challenges.
L. Source of industry-specific regulatory information.
M. Proceeding that affects undetermined individuals.
N. Proceeding that normally requires substantial evidence review.
O. Influences the level of White House involvement in agency determinations.
P. "Nonprecedential" is usually more accurate.
Q. Influenced by APA procedural requirements and judicial review.
R. Source of regulatory information organized by practice areas.
S. Burden of proof.
T. Source of government information organized by agency.
U. Proceeding that must satisfy more than APA procedural minima.
V. Requirement satisfied by consideration of written materials.
W. May be foreclosed by APA § 703.
X. Often affects only previously identified persons.

Examination No. _____

Answer Sheet

Part I — 80%

*Answer **only** 20 of 24* (4% each)

1. __A__
2. __D__
3. __C__
4. __A__
5. __C__
6. __B__
7. __D__
8. __A__
9. __C__
10. __A__
11. __D__
12. __B__
13. __C__
14. __A__
15. __C__
16. __A__
17. __C__
18. __B__
19. __A__
20. __D__
21. __A__
22. __D__
23. __A__
24. __C__

Part II — 20%

*Answer **only** 20 of 24* (1% each)

1. __E__
2. __H__
3. __B__
4. __K__
5. __W__
6. __I__
7. __F__
8. __N__
9. __A__
10. __U__
11. __D__
12. __O__
13. __M__
14. __X__
15. __V__
16. __G__
17. __Q__
18. __P__
19. __J__
20. __S__
21. __C__
22. __T__
23. __R__
24. __L__