Introduction to Administrative Process

Final Examination

Professor Field Fall 2004

General Instructions

This is a three-hour, open-book exam; you may consult any printed materials.

Section references, unless otherwise indicated, refer to the APA or to FOIA. References to, e.g., "Agency" or "Statute" are to a *specific* entity or document; "agency" or "statute" are not.

• Use the answer sheet provided; be sure to include your exam number.

• Questions in Part I are worth four times as much as those in Part II; in both, answer only 20 of 24 questions.

Part I: Multiple choice

[80 points]

Please choose the letter corresponding to the most correct concluding phrase or statement.

1. This official is appointed by the President:
   A. Secretary of Commerce.
   B. Librarian of Congress.
   C. NLRB members.
   D. All of them.

2. Adjudication to enforce legal requirements imposed, or overseen, by agencies:
   A. may be governed by the 6th or 7th Amendment.
   B is never subject to Presidential vetos.
   C. rarely occurs within agencies.
   D. is usually formal.

3. Statutory review:
   A. is governed solely by the APA.
   B. is usually available to any interested person.
   C. may be commenced in U.S. Courts of Appeal.
   D. is never commenced in U.S. Courts of Appeal.

4. Nonstatutory review:
   A. is governed solely by the APA.
   B. is usually available to any interested person.
   C. may be commenced in U.S. Courts of Appeal.
   D. is never commenced in U.S. Courts of Appeal.

5. Judicial review:
   A. is often available as soon as agency action commences.
   B. usually may be delayed only if a rule or statute so requires.
   C. is always available to remove biased officials before they have a chance to act.
   D. is sometimes delayed when courts, on their own, require remedies to be exhausted.

6. Standing to seek judicial review of administrative action is usually:
   A. conferred by the APA.
   B. available to any interested person.
   C. a function of congressional intent.
   D. a matter of administrative discretion.

7. When conducting statutory review of agencies' adjudicatory decisions, courts:
   A. need not consider the APA.
   B. often reverse for failure to satisfy § 554 requirements.
   C. must apply § 706 only when the organic or enabling legislation so states.
   D. must apply § 706 unless the organic or enabling legislation provides otherwise.

8. When reviewing agencies' adjudicatory decisions, courts often:
   A. do so de novo.
   B. give most attention to agencies' justifications.
   C. apply a clearly erroneous standard akin to that in F.R.C.P. 52(a).
   D. consider litigation affidavits, if available — or insist that they be prepared.

9. Officials most likely to be subject to at-will presidential removal are:
   A. Administrative Law Judges.
   B. Librarians of Congress.
   C. FTC Commissioners.
   D. NLRB members.

10. If two agencies impose conflicting substantive requirements:
   A. affected persons must comply with both as much as possible.
   B. the agency with the most general jurisdiction controls.
   C. the agency with the most specific jurisdiction controls.
   D. the agency enforcing the most recent statute controls.

11. Agency decisions are most likely to be upset if:
   A. members of Congress have asked top officials about ongoing adjudications.
   B. facts were not produced by sworn testimony subject to cross examination.
   C. White House staff have asked top officials about ongoing rule making.
   D. top officials unequivocally demonstrate strong policy biases.

12. Intramural adjudications must be upset when agencies:
   A. deviate from procedural rules published in the CFR.
   B. deviate from unwritten practices, and prejudice is clear.
   C. act contrary to information published in their staff manuals.
   D. Each of those behaviors would furnish an equally sound basis.

13. A provision in Statute requires Agency to hold adjudicatory "hearings." A court is most likely to reverse as required by:
   A. Statute if no oral hearing is provided.
   B. § 706(2)(D) if no oral hearing is provided.
   C. Richardson v. Perales if hearsay evidence is considered.
   D. Mathews v. Eldridge if an inadequate hearing is provided.

14. Agency needs to interpret a statutory term to resolve an ongoing adjudication. Under those circumstances, Agency:

A. must suspend the proceedings and commence informal rule making.
B. is apt to suspend the proceedings and commence informal rule making.
C. may interpret the statute and apply its interpretation retroactively in this case.
D. may interpret the statute but cannot apply its interpretation retroactively in this case.

15. Statute requires Agency to hold rulemaking "hearings." Under those circumstances, it:

A. may follow §§ 556-57.
B. must follow §§ 556-57.
C. will be reversed if the hearing doesn't satisfy Mathews v. Eldridge.
D. will be reversed if its hearings do not allow for some cross examination.

16. Statute requires applicants to provide supplemental information within a "reasonable time." If Agency has not previously decided what that means, it is most likely to be reversed for:

A. relying on the § 553 exemption for procedural rules.
B. relying on the § 553 exemption for interpretive rules.
C. simply refusing to consider supplemental information provided after 30 days.
D. informing applicants that requested information must be received within 30 days.

17. Statute states that Agency must promulgate rules within one year of its effective date. If Agency has not done so, and the deadline is near, a court:

A. may order Agency to move more quickly.
B. must order Agency to move more quickly.
C. is powerless to order Agency to move more quickly.
D. will regard any rules promulgated after one year as invalid.

18. Facial challenges to rules often succeed:

A. when validity is best assessed in the context of application.
B. when courts regard a rule as based on poor policy.
C. when an agency has used improper process.
D. in all of those circumstances.

19. Facial challenges to a rule often succeed:

A. if the agency's concise general statement is insufficient.
B. if they are filed as soon as the rule becomes final.
C. if they raise important, novel issues.
D. in all of those circumstances.

20. Statute contains no detail but requires Agency to promulgate safety-related labeling standards for a broad class of goods. On later review, courts would be most apt to:

A. apply the tests that they would apply to substantive review of Statute's validity.
B. apply the tests that they would apply to process review of Statute's validity.
C. invalidate them as based on excessively delegated authority.
D. No prior statements is true.

21. If members of Congress disapprove of some of Agency's standards (Q. 20), their quickest and surest method for remedying the situation is by:

A. veto.
B. statutory repeal.
C. hearings that threaten funding until Agency repeals them.
D. hearings that offer additional funding if Agency repeals them.

22. Following internal study and informal discussions with consumer groups, Agency has announced several new standards (Q. 20). Courts are most apt to regard them as:

A. invalid under APA § 706(2)(D).
B. binding if applied only prospectively.
C. binding because they are interpretive rules.
D. non-binding if the judges regard them as reflecting unsound policy choices.

23. Bob is a party that Agency could aid by ordering Roe to take corrective action. It has chosen not to pursue Bob's case, but his attorney is sure that this is based on a memo from Agency's General Counsel (GC). In such circumstances, she:

A. cannot obtain a copy of the memo because it is exempt under § 552(b)(4).
B. probably could use Statute to sue Roe in federal district court.
C. is entitled to review of GC's decision under 706(2)(A).
D. is entitled to a copy of the memo.

24. Statute requires Agency to keep certain information secret unless certain conditions are met. If Doe's attorney, following a request for such information, has received some but not all that he wants, a court should:

A. evaluate the availability of the remainder in light of § 552(b)(4).
B. evaluate the availability of the remainder under § 706(2).
C. order release of the remainder under § 706(1).
D. regard the matter as unreviewable.

Part II: Matching
[20 points]

Please **match only 20** (of 24) definitions that best correspond to numbered items.

1. 18 U.S.C. § 3500
2. Savings clauses
3. Severability clauses
4. Nondelegation doctrine
5. Enrolled bill rule
6. Private bills
7. Federal Circuit
8. Regional Circuits
9. CIT
10. *Panama Refining*
11. *Zurko*
12. *Skidmore*
13. Informal
14. Formal
15. Residuum rule
16. Adjudications
17. Rule making proceedings
18. Ooms
19. Collateral review
20. Grading agency bar exams
21. ALJs
22. Ex parte contact
23. Non-precedential
24. Loose-leaf services

A. An activity unique to the PTO
B. Describes, e.g., § 553 rulemaking
C. Provided an early overview of the APA
D. Presumably violates a right to fair notice
E. Attempt to preserve pre-existing remedies
F. Usually true of unpublished court opinions
G. Attempt to preserve valid portions of statutes
H. Legislation that confers benefits on named parties
I. Provided deference as a function of persuasiveness
J. Courts do not review intramural legislative processes
K. Affect individuals or property later to be determined
L. Forum for direct review of Customs Service decisions
M. Forum for indirect review of PTO trademark decisions
N. Affect only presently identifiable individuals or property
O. Said to have inspired passage of the Federal Register Act
P. Limits congressional capacity to confer power on agencies
Q. Usually refers to a proceeding conducted under §§ 556-57
R. Used by the PTO only in attorney disciplinary proceedings
S. Forum for indirect review of, e.g., Customs Service decisions
T. Usually much more current than official sources of information
U. Imposed a heavy burden for overcoming a presumption in § 559
V. May allow parties to eventually get what was denied in *Robbins Tire*
W. Commonly included in intellectual property infringement litigation
X. One basis for refusing to uphold orders based on incompetent evidence

Examination No. _____KEY_____

Answer Sheet

Part I — 80%

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

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

Part II — 20%

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

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