Introduction to Administrative Process
Final Examination
Professor Field
Spring 2012

General Instructions
This is a three-hour, open-book exam; you may consult any written materials. Use the answer sheet provided; be sure to include your exam number. References to, e.g., “Agency” or “Statute” are to a specific entity or document; “agency” or “statute” are not. Federal law applies to action by state or local agencies. All statutory citations are to 5 U.S.C. unless otherwise stated.

In Parts I and II, only the first 20 answers to any of 24 questions count.

Part I: Multiple Choice
[80 points]
Choose the best concluding phrase or statement for any 20 of the following questions.

1. Compared to other agencies, a distinguishing feature of the PTO and Copyright Office is:
   A. neither is governed by APA § 706.
   B. the focus on purely technical issues.
   C. the availability of both direct and collateral review.
   D. initial decisions are reviewed by those who head the agency.

2. Primary jurisdiction:
   A. governs substantive judicial review of agency decisions.
   B. affects the timing of judicial review of agency decisions.
   C. determines which court may review collateral actions.
   D. may delay judicial action on related matters.

3. Informal agency adjudications are characterized by:
   A. lack of formalities.
   B. similarity to informal rulemaking.
   C. lack of need to follow APA §§ 556-57.
   D. presumptive judicial review under APA § 706(2)(F).

4. Formal agency adjudications are:
   A. necessary if enabling legislation requires a hearing on the record.
   B. necessary if relevant enabling legislation requires a hearing.
   C. subject to the F.R.Civ. Procedure.
   D. subject to the F.R.Evidence.
5. The doctrine of administrative exhaustion:
   A. is governed by APA § 704.
   B. precludes review of action that is not final.
   C. bars all judicial review in the absence of intramural review.
   D. is governed by administrative common law predating the APA.

6. Judicial review is governed:
   A. by agency rules that are consistent with agency specific legislation.
   B. by the APA when agency specific legislation is silent.
   C. exclusively by agency specific legislation.
   D. exclusively by the APA.

7. When two or more courts might have jurisdiction to review:
   A. the potential for repeated reciprocal transfers is high.
   B. any named court that “may” review usually has sole jurisdiction.
   C. filing in the wrong court will mean that critical deadlines are missed.
   D. courts with explicit jurisdiction to review some issues have sole jurisdiction.

8. Given good facts and law, agencies’ adjudicative decisions are:
   A. affirmed when litigation affidavits contain adequate explanations.
   B. unreviewable unless a statute explicitly provides for review.
   C. affirmed when existing records offer adequate explanation.
   D. affirmed if courts can easily supply good reasons.

9. The standard of review for agency fact finding in informal adjudications is provided by:
   A. § 706(2)(A).
   B. § 706(2)(D).
   C. § 706(2)(E).
   D. § 706(2)(F).

10. Applicants refused copyright registration:
    A. may appeal from the Register to the Librarian of Congress.
    B. may seek review by the Copyright Board of Appeals.
    C. may seek review in the Federal Circuit.
    D. Each prior statement is true.

11. Any official sharing ultimate authority over pending adjudications:
    A. may discuss the merits in speeches.
    B. may discuss the merits in congressional hearings.
    C. may suggest to her colleagues that an ALJ’s decision be reversed.
    D. Each prior statement is false.
12. In the absence of prior notice, agencies’ adjudicative processes:
   A. may be challenged based on manuals designed for agency employees.
   B. must generally conform to requirements of APA §§ 556-57.
   C. can be altered only after notice and comment rule making.
   D. Each prior statement is true.

13. Agencies’ adjudicative decisions:
   A. must be based on “competent” evidence.
   B. must be supported by clear and convincing evidence.
   C. must afford an opportunity to present sworn testimony.
   D. may require more than a mere preponderance of evidence.

14. Agencies may act on the basis of newly adopted, and reasonably supported substantive positions:
   A. only prospectively, after informal rule making.
   B. unless their actions have retroactive effects.
   C. only prospectively, after formal rule making.
   D. despite existing precedent or rules.

15. Agencies are required to use formal rulemaking instead of informal rulemaking if the legislation in question:
   A. requires a hearing.
   B. requires a public hearing.
   C. requires a hearing on the record.
   D. Each prior statement is true.

16. Notice and comment rule making is required for:
   A. general statement of policy.
   B. procedural rules.
   C. interpretive rules.
   D. Each prior statement is false.

17. Petitions for agency rulemaking:
   A. may seek only new rules.
   B. must be published in the Federal Register.
   C. can rarely be denied without reasonable explanation.
   D. can be denied only if the agency lacks delegated authority.

18. A facial challenge to a rule is most likely to succeed if:
   A. it is filed as soon as the first draft is published for comment.
   B. if the effect on the challenger is immediate and substantial.
   C. the challenger participated in the rulemaking proceedings.
   D. the rule has long been in effect.
19. A challenge to agency rulemaking is unlikely to succeed if:
   A. it raises issues that were not raised during the proceedings.
   B. it is filed before the rule becomes final.
   C. the effect on the challenger is remote.
   D. Each prior statement is true.

20. With regard to delegations of authority, it may be said that:
   A. they are made solely to exploit agency expertise.
   B. prominent legislators are likely to have continuing influence.
   C. federal statutes are more likely to be invalidated than read narrowly.
   D. rules that Congress disfavors can be summarily stricken from the books.

21. With regard to congressional requirements, it may be said that:
   A. explicit grants of authority are more common than implicit grants.
   B. dubious limitations on agency authority are apt to be invalid.
   C. deadlines for action are likely to be strictly enforced.
   D. explicit grants and limitations are apt to be upheld.

22. Agencies’ reasonable statutory interpretations are most apt to be upheld when:
   A. substantive grants are narrow.
   B. challengers raise issues the agency didn’t consider.
   C. they bear on procedural requirements under the APA.
   D. they bear on procedural requirements specific to that agency.

23. Once courts have interpreted agency-specific statutes, reasonable agency interpretations, within delegated authority:
   A. will fail under *Chevron* step 1.
   B. will fail under *Chevron* step 2.
   C. cannot be inconsistent.
   D. must be honored.

24. Materials withheld under § 552(b)(3):
   A. must be shared in redacted form.
   B. can be used to justify agency rules.
   C. may be accessible under agency rules.
   D. Each previous statement is false.
Part II: Matching
[20 points]
Please match the best description to any (and only) 20 of the numbered cases.

1. Nash
2. Darby
3. Hitachi
4. Decker
5. McKart
6. Hearst
7. Franchi
8. Alappat
9. Fressola
10. Chenery II
11. Auto Parts
12. State Farm
13. ANA v FTC
14. Abbott Labs
15. Overton Park
16. J.B. Williams
17. Jacob Siegel
18. Air Line Pilots
19. NLRB v. Sears
20. DEC v. Diamond
21. American Horse
22. NLRB v. Robbins
23. Nat’l Tire Dealers
24. Public Citizen v. Young

A. No APA governs Congress.
B. APA § 704 limits judicial discretion.
C. Permits a facial challenge to a rule.
D. “May” was construed to mean “shall.”
E. ALJs enjoy considerable independence.
F. FOIA made reasons not to prosecute available.
G. Finds a right to a jury trial despite statutory silence.
H. Remands for consideration of a less severe remedy.
I. Finds refusal to commence rulemaking to be reviewable.
J. A party’s loss of an expectancy was no bar to agency action.
K. Requirements for enacting and repealing rules are the same.
L. Lack of intramural review did not preclude collateral challenge.
M. Decisionmaker bias could be challenged despite lack of finality.
N. Agency rules can reduce the scope of matters to be adjudicated.
O. The agency could impose obligations without following APA § 553.
P. Rulemaking review under §§ 706(2)(A) and (E) has the same focus.
Q. A statutory clause trumps an agency’s finding risks to be reasonable.
R. A party not entitled to participate could not challenge applicable rules.
S. Pretrial discovery of witness statements were not available under FOIA.
T. The agency was free to disregard traditional notions of employee status.
U. Issuance of a patent did not estop the FTC from challenging utility claims.
V. Holds unanimously that administrative action is presumptively reviewable.
W. Deference to an agency’s factfinding may turn on the scope of its expertise.
X. A decision was found reviewable despite concerns about authority to rehear.
Answer Sheet

Part I — 80%
Answer only 20 of 24 (4% each)

1. ___C___ 13. ___D___
2. ___D___ 14. ___D___
3. ___C___ 15. ___C___
4. ___A___ 16. ___D___
5. ___A___ 17. ___C___
6. ___B___ 18. ___B___
7. ___B___ 19. ___D___
8. ___C___ 20. ___B___
9. ___A___ 21. ___D___
10. ___B___ 22. ___D___
11. ___C___ 23. ___D___
12. ___A___ 24. ___C___

Part II — 20%
Answer only 20 of 24 (1% each)

1. ___E___ 13. ___M___
2. ___B___ 14. ___C___
3. ___R___ 15. ___V___
4. ___U___ 16. ___G___
5. ___L___ 17. ___H___
6. ___T___ 18. ___N___
7. ___D___ 19. ___F___
8. ___X___ 20. ___W___
9. ___O___ 21. ___I___
10. ___J___ 22. ___S___
11. ___P___ 23. ___A___
12. ___K___ 24. ___Q___