

★★★★ADMINISTRATIVE LAW★★★★

EXAMINATION

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1. This is a two hour examination, closed book except for for a copy of the Administrative Procedure Act, in the form distributed to the class. The copy must have no notes added to it, but may be highlighted or underlined.

2. The examination consists of one fact pattern, and questions based on it. Answers to Part A will count for 2/3 of the grade, answers to Parts B and C combined for 1/3.

3. If you believe your answer requires facts not given, you may assume specific, limited facts, but you must state your assumptions.

4. If writing by hand:

- Write on only one side of each blue book page
- Number blue books
- Write exam number on each blue book
- Write legibly; double spacing is preferred.

5. Read the question carefully, and pay particular attention to the call of the question. Take time to think about and outline your answers. Conclusory answers, without adequate analysis generally receive little credit.

6. Remember that the prime focus is the application of the law to the facts of the question. Recitation of law without facts should be kept to the minimum necessary to introduce discussion of the facts.

★★★★★ WATCH YOUR TIME!★★★★★

FINAL EXAMINATION QUESTION

The National Traffic and Motor Vehicle Safety Act ("Act") directs the Secretary of Transportation to "issue motor vehicle safety standards which will improve highway safety."

The Act authorizes judicial review under APA 706 of all actions relating to standards.

The Secretary has issued internal rules requiring that in rulemaking consideration be given to (1) relevant available safety data, (2) whether the standard is reasonable, practicable and appropriate for the particular type of motor vehicle, and (3) the extent to which the standards will contribute to carrying out the purpose of the Act. The rules provide that the views of the automobile manufacturing industry "shall be given great weight."

There are presently in effect standards adopted fifteen to twenty years ago requiring seat belts and air bags in most vehicles. The Secretary now proposes to require that all vehicles be equipped with a feature popularly known as the "Ratlight." The Ratlight will show whether or not all passengers are wearing their seat belts. If not all passengers are wearing their belts, small but visible exterior red lights will illuminate under the left headlight and left taillight, enabling law enforcement to enforce seat belt laws.

The Secretary has issued a proposed regulation establishing a standard requiring the Ratlight in passenger vehicles. After written comments both pro and con were received, a hearing was held in accordance with the informal rulemaking procedures of APA 503.

At the hearing, at which the Assistant Secretary of Transportation presided, interest groups representing consumers supported the standard, and the motor vehicle industry strongly opposed it.

General Motors, on behalf of the industry, introduced the following evidence:

- Surveys that showed that the public does not like the idea of the Ratlight, some on privacy grounds.
- The Baltimore, Maryland police chief testified that police departments did not regard it as necessary.

- Installation of the Ratlight would add a significant cost to each vehicle.

Consumer groups introduced the following evidence:

- Surveys that showed that a significant part of the population, and an even higher percentage of those under 25, did not consistently wear their seat belts.
- The Raleigh, North Carolina chief of police, and the Assistant Chief of Police of Lubbock, Texas, testified that police departments believe the Ratlight would contribute to motor vehicle safety.
- Safety experts testified to the extent to which seat belts, when worn, are effective. Both statistical and anecdotal evidence was introduced.

The Assistant Secretary refused to admit evidence proffered by GM about injuries incurred in accidents by passengers which resulted from their wearing seat belts.

Afer the hearing, prior to action on adoption of the final regulation:

- The Vice President for North American Sales of General Motors, met with his friend, the Secretary, a former Vice President of Delco Batteries, a major original equipment supplier to the auto industry, and initiated a discussion of the proposed regulation, emphasizing the high costs involved.
- General Motors submitted a written proposal of an alternative method of assuring seat belt use, a blinking interior light which would remain on for three minutes after the vehicle's motor started. The Secretary summarily refused to consider the GM proposal.
- The teenage son of the Secretary was seriously injured in an auto accident while not wearing his seat belt.

A final regulation was issued, written by the Assistant Secretary of the Department of Transportation and signed by the Secretary, adopting the standard, and making the Ratlight mandatory for all cars, light pickups, minivans and SUVs manufactured in 2011.

Both parties appeal to the Court of Appeals, which has jurisdiction over appeals from final actions of the Secretary.

- Both parties argue prejudice from the facts and procedures prior to adoption of the rule.
- General Motors contends that the regulation is unnecessary, not supported by the data presented to the hearing, and unduly expensive for the purported benefits. GM also questions the impartiality of the Secretary.
- The consumer groups contend that the regulation is inadequate because it does not cover all pickup trucks and full size vans and does not go into effect for six years.

Discuss:

- A. The contentions of the parties, evaluating the strength of each argument;
- B. The nature and standard of review of the appeals by the Court of Appeals;
- C. The likely decision of the Court of Appeals.