

**Professor Nathan Sales**  
**Administrative Law**  
**Spring 2009**

Reading assignments. The casebook for this course is Cass, Diver & Beermann, *Administrative Law: Cases and Materials* (5th ed. 2006). Administrative Law readings tend to be dense, and they require careful study. For that reason, the typical reading assignment for each class session will be about 20-25 pages, and only rarely will exceed 30. That's the good news.

Class participation. The bad news is that I expect you to do the reading, and be prepared to discuss it in every class session. In effect, each student will be "on call" in each class. I reserve the right to adjust your grade up or down a half-step (e.g., A to A-minus, or B to B-plus) based on your preparation and contributions to class discussion.

Reaching me. I don't keep regular office hours, but I can make myself available to meet virtually anytime. Please call or email to set up an appointment. My office is room 424, phone is (703) 993-4420, and email is [nsales1@gmu.edu](mailto:nsales1@gmu.edu).

Course outline. The following outline is tentative and may change based on the speed with which we progress through the material. After each class, I will announce the reading assignment for the next class; I may also make supplemental readings available from time to time. For the first class, please read assignment I.a. ("CB" refers to the casebook; "APA" refers to the Administrative Procedure Act, which is excerpted at the end of the casebook.)

- I. Introduction and separation of powers
  - a. Overview of the administrative state – APA §§ 551, 553(a)-(c), 554(a)-(c), 706; CB 1-15
  - b. The nondelegation doctrine
    - i. Delegation of legislative powers – CB 15-38
    - ii. Delegation of adjudicative powers – CB 503-14
  - c. Legislative control of agencies
    - i. The legislative veto – CB 38-55
    - ii. Legislative oversight – CB 64-65
  - d. Executive control of agencies
    - i. Appointment – CB 65-72
    - ii. Removal – CB 72-77
    - iii. Reconsidering appointment and removal: *Morrison v. Olson* – CB 78-93
    - iv. Presidential oversight – CB 93-108
  - e. Overview of agency policymaking
    - i. Policymaking framework – APA §§ 553-54, 556-57; CB 333-39
    - ii. Rulemaking – CB 339-51
    - iii. Adjudication – CB 351-68
    - iv. Informal actions – CB 368-77
- II. Standards of judicial review
  - a. Section 706 and *Overton Park* – APA § 706; CB 109-124

- b. Questions of law
    - i. *Chevron* – CB 124-48
    - ii. *Mead* – CB 148-59
  - c. Questions of fact/policy: substantial evidence – CB 159-74
  - d. Questions of fact/policy: arbitrary and capricious – CB 188-203
- III. Availability of judicial review
- a. Reviewability
    - i. “Agency action” – CB 205-18
    - ii. Statutory preclusion – CB 218-32
    - iii. “Committed to agency discretion by law” – CB 232-64
  - b. Standing
    - i. Statutory standing requirements – CB 267-78
    - ii. Constitutional standing requirements – CB 278-303
  - c. Timing of judicial review: Ripeness, finality, and exhaustion – CB 303-25
- IV. Rulemaking
- a. Statutory framework – APA §§ 553, 556-57; CB 377-79
  - b. Rights of participation
    - i. Notice – CB 379-86
    - ii. The concise general statement – CB 386-88
    - iii. Ex parte contacts – CB 388-96
    - iv. Political influence – CB 396-409
    - v. Impartiality – CB 409-21
  - c. Hybrid rulemaking and negotiated rulemaking – CB 421-35, 455-68
  - d. Exemptions from rulemaking requirements – CB 435-55
- V. Adjudication
- a. Due process requirements
    - i. Protected interests – CB 514-48
    - ii. What process is due?
      - 1. *Mathews v. Eldridge* – CB 548-64
      - 2. Neutral decisionmaker – CB 564-77
  - b. Statutory requirements – APA §§ 554, 556-57; CB 583-97
- VI. Investigations
- a. Overview – CB 617-21
  - b. Physical inspections – CB 621-34
  - c. Producing and maintaining information – CB 634-47
- VII. Licensing
- a. Entry regulation – CB 745-46, 759-93, 799-801
  - b. Rate regulation – CB 801-13
  - c. Deregulation – CB 813-28