International Association for Food Protection WEBINAR

Chevron Deference and the Food Industry

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Chevron Deference and the Food Industry

International Association For Food Protection

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DIVISION OF AGRICULTURE
RESEARCH & EXTENSION
University of Arkansas System

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  - The NALC is a unit of the University of Arkansas System Division of Agriculture
  - In close partnership with the USDA Agricultural Research Service, National Agricultural Library
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- Issues every 2 weeks (once only in December)
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What's Going On?

- In June 2024, the United States Supreme Court issued its highly anticipated ruling in *Loper Bright Enters. v. Raimondo*

- The decision officially over-turned *Chevron* deference, a 40-year-old doctrine of administrative law

- Food and ag industries thoroughly regulated by numerous agencies

Outline:


Admin Law Basics
Chevron Deference
Loper Bright Enters. v. Raimondo
Impacts to Ag

What is Administrative Law?

Administrative law is the area of law governing the creation and operation of administrative agencies

Includes statutes such as the Administrative Procedure Act, judicial doctrines, and constitutional strictures

Provides boundaries for federal agency authority to implement laws, adopt regulations, and make decisions

How do Federal Agencies Function?

Federal agencies are part of the Executive Branch of government

- The President typically appoints the head of a federal agency

They are created through legislation passed by Congress and signed by the President

- The same laws that create federal agencies also put boundaries on their authority – agencies are created through delegations of power and so may not exceed the scope of that delegated authority

Primarily, federal agencies oversee the implementation of an area of the law

- In general, Congress will pass a law and then delegate its implementation to a particular federal agency, usually instructing the agency to pass regulations to help implement the law
- Agencies will then pass those regulations according to procedures laid out in the Administrative Procedure Act

How do Courts Factor In?

- Courts help to serve as a “check” on federal agency authority
- Most agency actions and regulations can be challenged in a court of law
- Judges review the action or regulation to determine whether the agency acted outside its scope of authority

Admin Law & Agriculture

Agriculture/food is one of the most heavily regulated industries in the United States	• Administrative law one of the most important aspects of agricultural and food law
Multiple agencies administer statutes that regulate agriculture	• United States Department of Agriculture • Environmental Protection Agency • Food and Drug Administration • Fish and Wildlife Service • Etc.
Various aspects of agricultural law are regulated by agencies	• Environmental laws and regulations • Crop insurance programs • Health and safety inspections • Distribution and marketing • Etc.

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What is *Chevron* Deference?

Chevron deference comes from a Supreme Court case from 1984 called *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*

The doctrine established a legal test for courts to use to determine when to defer to a federal agency's interpretation of a statute Congress has tasked it with implementing

Chevron deference speaks to the balance of power between the three branches of government and who gets to say what the law means

How do Courts Apply *Chevron* Deference? – Step One

- The *Chevron* doctrine is applied through a two-step framework

- In step one, a court will consider "whether Congress has directly spoken to the precise question at issue"
  - Courts review the relevant statute to see whether the statutory language is "ambiguous"
    - Example: the definition of "habitat" in the Endangered Species Act is ambiguous because Congress did not provide a statutory definition for the term but uses it throughout the statute; however, "endangered species" is *not* ambiguous because Congress clearly defined the term
  - If the statutory language is *not* ambiguous, then the *Chevron* process is at an end – the court should review the challenged agency action to determine whether the agency exceeded its statutory authority
  - If the statutory language is ambiguous, courts should proceed to step two

How do Courts Apply *Chevron* Deference? – Step Two

- In step two, a court will determine whether an agency's interpretation of ambiguous statutory language is "reasonable"
  - In other words, is the agency's interpretation "rationally related to the goals" of the statute
  - If the agency's interpretation is reasonable, then the court will defer to the agency even if the court believes another interpretation would be better

- *Chevron* does not ask what the best interpretation of a statute is, *Chevron* asks whether an agency's interpretation is reasonable
  - Example: In *Northwest Ecosystem All. v. U.S. Fish & Wildlife Serv.*, 475 F.3d 1136 (9th Cir. 2007), the court concluded that it was reasonable for FWS to define a "distinct population segment" of a species as a population that is both "discrete" and "significant"

What did Courts do Before *Chevron* Deference?

Chevron was decided in 1984, but courts had been considering the scope of agency authority for decades prior to the decision

Before *Chevron*, the primary Supreme Court case concerning agency authority was a case from 1944 known as *Skidmore v. Swift*

In *Skidmore*, the Court held that interpretations and opinions of federal agencies made in an official capacity may be considered by courts and given due respect, granting agencies the "power to persuade," not the "power to control"

Before *Chevron*, courts could consider agency interpretations and be persuaded by them, but were not required to defer to such interpretations if the court disagreed

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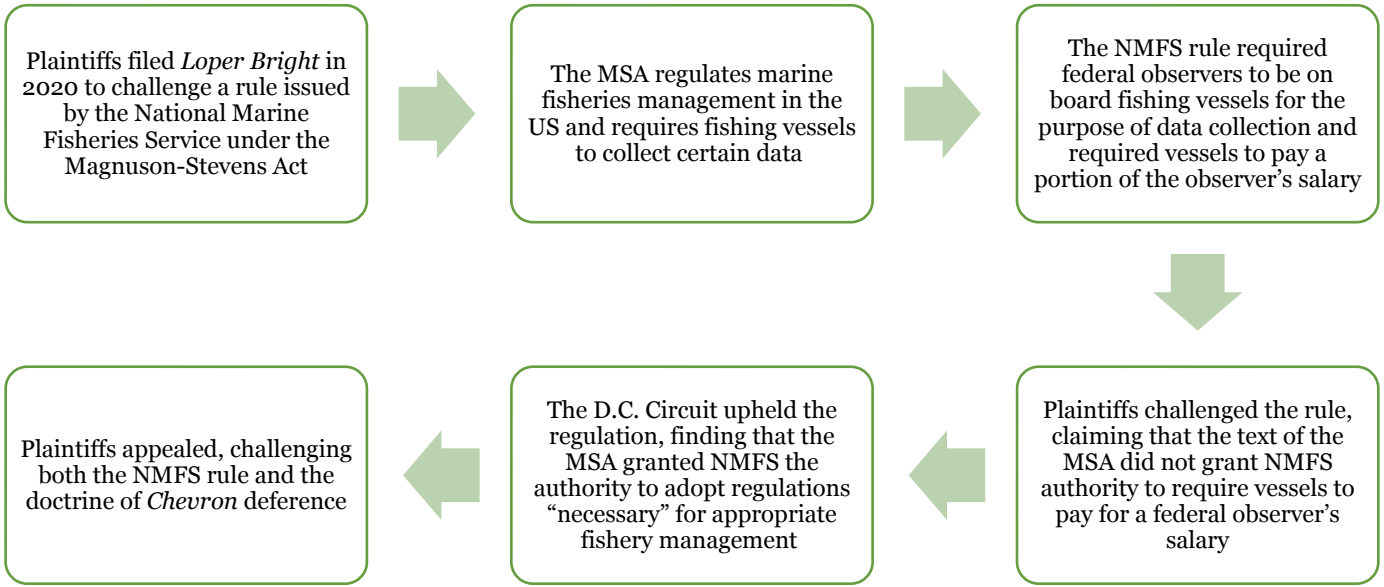
Loper Bright: The Basics

- SCOTUS issued its decision in *Loper Bright* on June 28, 2024
- The Court's ruling formally overturned its previous holding in *Chevron* and the doctrine of *Chevron* deference
- The decision did *not* reverse any court cases decided under *Chevron*
- Ultimate conclusion: It is the duty of courts to "say what the law is."

Pathway to the Supreme Court



Loper Bright v. Raimondo

- **Question before the Court:**
  - Should the Supreme Court "overrule *Chevron* or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency"?
- **Holding:**
  - The Administrative Procedure Act requires courts to "exercise their independent judgment" when determining whether an agency has acted outside its statutory authority.
  - "Courts may not defer to an agency interpretation of the law simply because a statute is ambiguous[.]"
  - "In an agency case as in any other […] there is a best reading [of the law] all the same – 'the reading the court would have reached' if no agency were involved."
- **Reasoning:**
  - The Court cited both the Administrative Procedure Act and past SCOTUS decisions to support its conclusion
  - "To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law[.]"
    - 5 U.S.C. § 706.
  - It is "the province and duty of the judicial department to say what the law is."
    - *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)

Loper Bright vs. *Chevron*

Chevron

- When considering whether an agency exceeded its statutory authority, apply *Chevron* framework
- If statutory language is ambiguous *and* the agency's interpretation is reasonable, defer to agency
- Gives agencies more power to "say what the law is"

Loper Bright

- When considering whether an agency exceeded its statutory authority, courts should "exercise their independent judgment"
- Courts should resolve statutory ambiguities by applying the interpretation the court would have reached "if no agency were involved"
- Gives courts more power to "say what the law is"

What Does it All Mean?

Going forward, courts may no longer defer to an agency's reasonable interpretation of ambiguous statutory language – instead, courts must independently read and interpret ambiguous statutory text	• This could prove challenging! For example, the Public Health Service Act requires FDA to regulate biological products, including "proteins." When does an alpha amino acid polymer qualify as a "protein"?
Not all judges will reach the same conclusion – there is likely to be some uncertainty going forward as courts adjust to a post-*Chevron* world	• Some courts may interpret statutory language more strictly than an agency does while others could be more permissive
While *Loper Bright* overturned *Chevron*, it left *Skidmore* in place – agencies may still have the "power to persuade"	• For now, it is still unclear how *Skidmore* will be applied in a post-*Chevron* world

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How Will *Loper Bright* Impact Ag?

The agricultural industry is heavily regulated, many of the statutes that impact ag have ambiguous statutory language that courts and agencies have struggled to interpret, including:

- Clean Water Act
- Food Safety Modernization Act
- Packers and Stockyards Act
- Endangered Species Act
- Perishable Agricultural Commodities Act
- Federal Insecticide, Fungicide, & Rodenticide Act
- And so many more!

Ultimately, this ruling could impact almost all areas of the agricultural industry in some way, shape, or form

- In another Supreme Court case issued this term, *Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve System*, the Court made it easier to challenge agency regulations that are over six years old
- Between *Loper Bright* and *Corner Post*, it is likely that some agency regulations which were considered settled will face new legal challenges

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Additional examples/thoughts

- GRAS – “Generally recognized as safe”
- Drug approvals (not food of course, but still FDA example)
- Will impact regulatory process, as well as advocacy
- What is a “dietary supplement”?

Final Thoughts

- *Loper Bright* shifts how courts handle questions of agency authority
- It is still too early to tell what the exact outcome of *Loper Bright* will be, but overall the ruling gives courts more authority to "say what the law is"
- Different judges will reach different conclusions! Some courts may interpret ambiguous language more strictly than agencies and vice-versa

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