

# The National Agricultural Law Center

*We are the nation's leading source of agricultural and food law research and information*



“The Evolving Federal Regulatory Landscape”

2024 USA Rice Outlook Conference

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**UofA**

**DIVISION OF AGRICULTURE**

**RESEARCH & EXTENSION**

*University of Arkansas System*

# About the NALC

- Since 1987, the National Agricultural Law Center is the nation's leading source for agricultural and food law research and information.
  - 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
- Objective, non-partisan research and information regarding laws and regulations affecting agriculture

[nationalaglawcenter.org](http://nationalaglawcenter.org)



# NALC Newsletter: The Feed



- Issues every 2 weeks (once only in December)
- Concise ag law & policy updates w/ links to NALC resources



# General Outline

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- Legislative landscape – Farm Bill, disaster/financial assistance, federal appropriations
- Regulatory Outlook
  - New Administration & Congress in just over another month from now
  - Key shifts via U.S. Supreme Court decisions: redefining the balance of federal power
    - *Loper Bright* – agency deference
    - *Corner Post* -- statute of limitations to challenge federal rulemaking
  - D.O.G.E. (so called “Department of Government Efficiency”)
- What does it all mean?



# What's Going On?

- In June 2024, the U.S. Supreme Court issued its highly anticipated ruling in *Loper Bright Enters. v. Raimondo*
- The decision officially overturned *Chevron* deference, a 40-year-old doctrine of administrative law (along w/ other USSC decisions)
- Agriculture is regulated by numerous agencies and is likely to be impacted by the *Loper Bright* ruling in years to come



# 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 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.



# 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



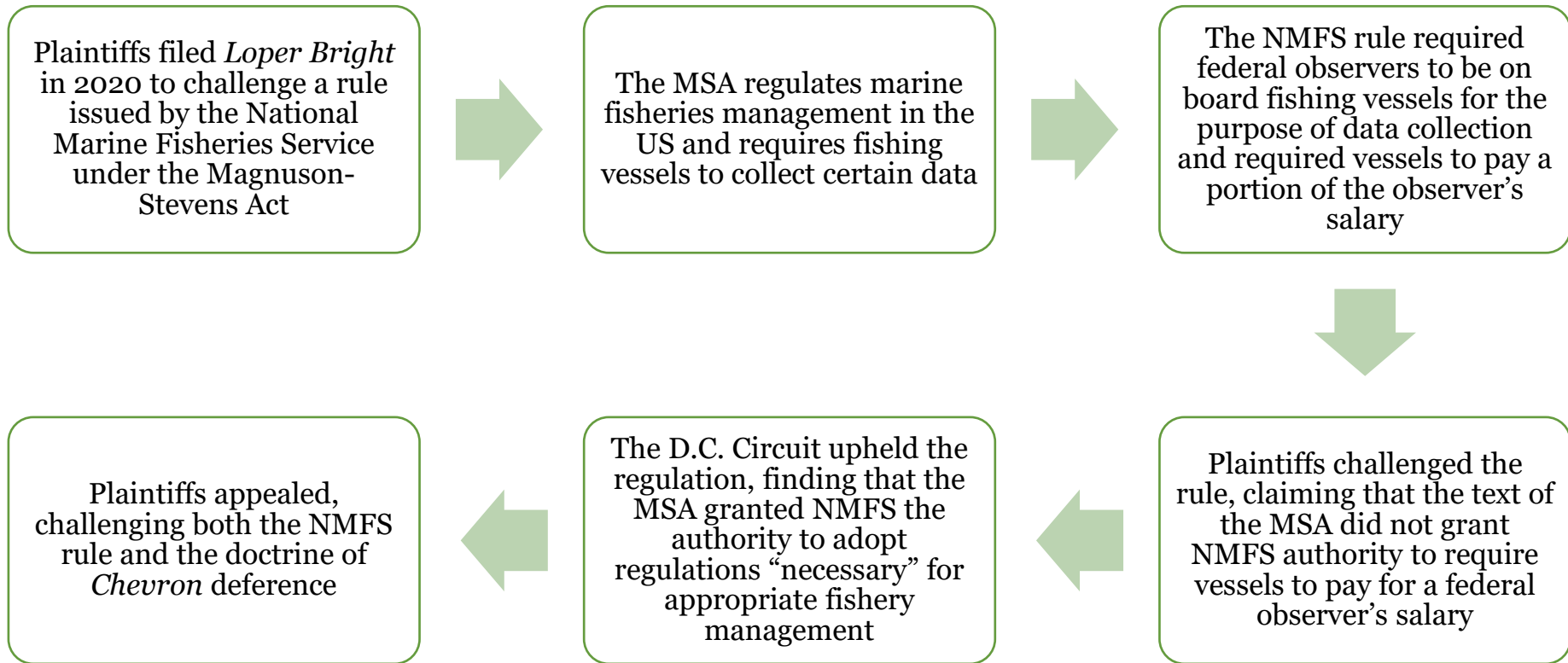
# *Loper Bright*: The Basics



- 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 vs. Chevron*

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## ***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



# 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



# Final Thoughts



- *Loper Bright* shifts how courts handle questions of agency authority
- Still too early to tell, but balance of power has shifted to courts vs. Congress
- Different judges will reach different conclusions! Some courts may interpret ambiguous language more strictly than agencies and vice-versa
- Judicial efficiency?

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