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What Loper Bright And Trump 2.0 Mean For New Transpo Tech

By **Ariel Wolf, David Bonelli and Ian Williams** (December 16, 2024, 4:44 PM EST)

Since the 2024 presidential election, much attention has been focused on the incoming Trump administration's stated goal of reviewing and rescinding regulations in order to spur economic growth.

This agenda could lead to significant shifts in how major industries — including the automotive industry — are regulated. It will affect entities across the transportation ecosystem, including those developing emerging transportation technologies like autonomous vehicles.

These changes will likely be amplified by the U.S. Supreme Court's June decision in *Loper Bright Enterprises v. Raimondo* and *Relentless v. U.S. Department of Commerce*. In a 6-3 decision, the court overturned its 1984 ruling in *Chevron USA Inc. v. Natural Resources Defense Council Inc.*, which had been a cornerstone of administrative law for 40 years.

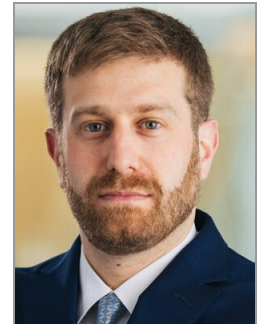
One of the court's most significant rulings of 2024, the *Loper Bright* decision signals a seismic shift in administrative law, including for the regulatory agencies that make up the U.S. Department of Transportation.

Under *Chevron*, when reviewing an agency action pursuant to an ambiguous law, a court was required to defer to the agency's interpretation of said law, provided that the interpretation was permissible.

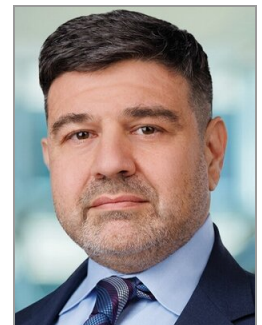
For decades, this standard gave agencies' statutory interpretations significant weight, and limited the amount of judicial review that agency actions built on those interpretations could be subjected to.

The court's decision in *Loper Bright* strips away this deference, and allows courts to review agency decisions using the full array of traditional statutory interpretation methods.

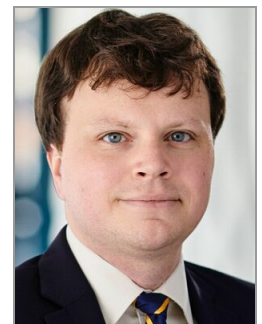
Going forward, per the court, an agency interpretation of a statute "cannot bind a court," but may be especially informative "to the extent it rests on factual premises within [the agency's] expertise." This loss of discretion for regulatory agencies could lead to longer timelines for the development of new regulations.



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Chevron, Loper Bright and Federal Motor Vehicle Regulation

The National Highway Traffic Safety Administration regulates motor vehicle safety primarily under the Motor Vehicle Safety Act, which authorizes the secretary of transportation to "prescribe motor vehicle safety standards" and requires that "[e]ach standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms."

NHTSA has used this authority to add new regulations to the Federal Motor Vehicle Safety Standards for decades. Should any FMVSS be challenged, courts have been required to give deference to NHTSA's interpretations of what makes a standard "practicable" and how a standard would "meet the

need for motor vehicle safety."

Under Loper Bright, however, courts will be able to render their own decision on the practicability of a new FMVSS, and will be able to evaluate whether such a standard meets the needs of motor vehicle safety. NHTSA will be forced to defend its decision-making in court, and convince a judge of the accuracy of its interpretations.

Opponents can now similarly challenge FMVSS drafted pursuant to directed rulemaking from Congress — such as the directed rulemakings on crash avoidance and automatic emergency braking that were included in the Infrastructure Investment and Jobs Act.

Under Loper Bright, to protect new rules, agencies like NHTSA may have to hew much more closely to congressional instructions when drafting directed rules, as any drift from what is authorized by statute risks being thrown out by a court.

Transportation Regulation under Loper Bright

While it remains to be seen how lower courts will implement Loper Bright, there are a few important possibilities to consider for the future of federal transportation regulation by agencies such as NHTSA and the Federal Motor Carrier Safety Administration, or FMCSA.

Fewer New Regulations, and a Greater Focus on Precision

Agencies undertaking rulemaking post-Loper Bright will need to spend more time and effort establishing the connection between a new regulation and existing statutory authorities. Establishing clear connections between the two will help protect a regulation from legal challenges, though the threat of increased legal scrutiny will likely further extend the already lengthy drafting period for new rules.

NHTSA currently takes an average of 5 years to complete rulemaking on issues of medium complexity — a time window that seems likely to grow as the agency spends more time drafting clear and specific language intended to pass greater judicial scrutiny.

This added effort will also likely reduce the overall number of new rules being proposed by NHTSA, FMCSA and other DOT agencies, as each rule will require greater attention and resources.

Increased Litigation Over Agency Actions

The elimination of Chevron deference for agency interpretations will also likely lead to an increase in court challenges to transportation-related regulations issued by NHTSA, FMCSA and other DOT agencies. Courts will now be allowed to review transportation regulations at a deeper level, giving interested parties greater ability to contest agency actions.

For example, earlier this year, NHTSA published a final rule establishing a new FMVSS that will require light vehicles to be equipped with automatic emergency braking systems. Under Chevron, an entity seeking to challenge such a rule would have likely been limited to nonlitigation strategies, such as lobbying Congress to overturn the rule or petitioning NHTSA for reconsideration.

Under Loper Bright, however, entities with objections to a new FMVSS or other rule are now able to present their arguments to courts that are no longer required to defer to NHTSA's interpretation of the laws underlying that rule.

This greatly expands opportunities to successfully challenge an agency's actions — and makes litigation, or the threat of litigation, a more useful tool for those seeking to change regulations.

Wider Agency Adoption of Alternatives to Rulemaking

As rulemaking becomes more challenging in a post-Chevron world, DOT agencies may expand the use of guidance documents, best practices and other educational materials to influence industry behavior without formal regulation.

NHTSA has already pursued such action with documents like the agency's Cybersecurity Best Practices. Going forward, agencies may look to expand the number of such documents they publish to cover topics that may otherwise have been included in regulations.

Agencies like NHTSA and FMCSA may likewise seek to encourage the further development of industry standards through cooperation with standards-setting entities like SAE International, and use those standards to drive the adoption of technologies or design features they may have previously required through regulations.

Increased Role for Congress, and a Need for Clarity in Legislation

The Loper Bright decision may also lead to changes in the way Congress drafts statutes, requiring more specificity when granting agency authority.

Future directed rulemaking, like that found in the Infrastructure Investment and Jobs Act, will need to explicitly delegate discretion to an agency, and statutes may need to be more specific and include greater detail overall, rather than providing broad instructions and expecting an agency to "fill in the blanks" with its own interpretations.

This increased need for careful drafting could further complicate the passage of legislation through a Congress that has already seen a slowdown in the number of bills passed year after year. Loper Bright could also spur greater congressional criticism and oversight of agency interpretations.

On July 10, the chairs of the House Transportation and Infrastructure and Oversight and Accountability Committees sent a letter to U.S. Secretary of Transportation Pete Buttigieg, seeking information on DOT regulations enacted or proposed since the start of the Biden administration, how those rules have been or could be challenged in court, and whether those rules relied on agency interpretations that would have received deference under Chevron, along with a request for a list of all judicial decisions made since 1984 that found in favor of a DOT agency due to Chevron deference.

In this way, the realignment of administrative law post-Chevron may be used by Congress as a new route for criticizing agency actions and interpretations they disagree with, and probing agency decision-making.

What Loper Bright Means for Autonomous and Connected Mobility Regulation

Given the new challenges Loper Bright will bring to agency regulatory actions, what does this mean for companies in the autonomous and connected mobility space, the broader motor vehicle industry, and other areas of the transportation ecosystem?

As noted above, for companies that seek to challenge new regulations, Loper Bright offers new opportunities to bring those challenges before a court. Increased legal challenges, however, could lead to added uncertainty for manufacturers during the design phase of new products, as the pace of legal challenges may disrupt the timeline of when a new regulation is supposed to go into effect — making it harder to ensure a design properly complies with the regulations that will be in place when it is released.

At the same time, an increased need for specificity in statutes to clarify agency authority provides new opportunities for industry actors to have greater influence on not only the content of a law itself, but also on any regulations agencies may issue pursuant to that law.

For entities working on emerging transportation technologies, like AV developers, Loper Bright offers both advantages and challenges. Reduced discretion for regulatory agencies and extended timelines for regulatory drafting will likely drive down the number of regulations produced each year, which could provide emerging technologies with more time to mature before regulations are put in place.

At the same time, regulations intended to support the deployment of emerging technologies could face further delays due to more difficult drafting processes or legal challenges from other actors who oppose the deployment of a given technology.

Such regulations might include FMCSA's proposed rule on the safe integration of commercial motor

vehicles equipped with automated driving systems — still under review by the Office of Management and Budget — or NHTSA's long-gestating FMVSS updates on considerations for telltales, indicators and warnings in vehicles equipped with automated driving systems,

One thing is certain: The impacts of Loper Bright, and the incoming Trump administration's deregulatory agenda, will be felt across the automotive industry for the foreseeable future.

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