

The Detroit News

End of Chevron deference carries potentially vast impacts for automakers, other industries

Dan Becker, a longtime environmental advocate and director of the Center for Biological Diversity's Safe Climate Transport Campaign, agreed.

"The real impact of Chevron ending has already occurred. It occurred over the last several years when it was clear that the right wing was gunning for it. Our side and government agencies essentially stopped relying on it," he said.

Becker explained that the Biden administration's EPA rule dramatically limiting tailpipe emissions into the next decade — which will push automakers to produce more low-emission electric vehicles and has often been dubbed by Republicans as an EV mandate — is a prime example of a federal agency crafting a regulation that would survive in a post-Chevron world.

"You can bench press the EPA rule and build muscle," Becker said. "They wrote a 1,000-page rule and regulatory analysis document that goes through every aspect of it and explains how it is justified by the Clean Air Act and how it meets the intentions of Congress when they passed Clean Air Act."

Grant Schwab
August 5, 2024

Washington — When the U.S. Supreme Court recently issued a decision ending the practice of Chevron deference, legal scholars and political observers alike called it a seismic change in how the federal government regulates key industries.

For the auto industry, which is subject to some of the most controversial and politicized regulations in the country, its end could be especially disruptive. However, could is the important word there.

"There are some very powerful torpedoes headed right for the (Biden administration) tailpipe emissions rule," said Mario Loyola, an energy policy fellow at the conservative Heritage Foundation. But it remains to be seen whether those torpedoes — an explosive metaphor for legal challenges to ambitious Biden-era regulations meant to combat climate change — will hit.

As the dust settles around the high court's monumental June ruling, advocates for and against regulations on the auto industry are split on just how impactful it will be. The span of potential outcomes is vast, ranging from a new era of more subtle safety and emissions regulations that change incrementally and create less uncertainty for businesses to outright cancellations of climate-minded rules that promised to push the industry toward electrification.

Chevron's 'death by a thousand cuts'

Chevron deference, for those who do not often track the high court and regulatory affairs, refers to the decades-long custom of allowing federal agencies to make their own determinations in interpreting ambiguous laws. It was initially borne out of a unanimous 1984 Supreme Court case — *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.* — that granted the Environmental Protection Agency under President Ronald Reagan the ability to interpret the Clean Air Act in a manner that favored businesses.

The doctrine, in the 40 years following, was used flexibly by various administrations to adopt more stringent or more lenient regulatory positions. The Supreme Court and lower federal courts cited Chevron more than 18,000 times as of June 2023, according to the nonpartisan Congressional Research Service.

But it fell out of favor among conservatives over time, with many arguing that it empowered government overreach. As the court's composition has moved to the right over the past decade, many court watchers — including federal agencies that make rules — saw the end of Chevron deference coming.

"Chevron had died death by a thousand cuts before the *Loper Bright* case came along," said Loyola, referencing the recent case that spelled the end of the doctrine.

Dan Becker, a longtime environmental advocate and director of the Center for Biological Diversity's Safe Climate Transport Campaign, agreed.

"The real impact of Chevron ending has already occurred. It occurred over the last several years when it was clear that the right wing was gunning for it. Our side and government agencies essentially stopped relying on it," he said.

Chevron-proof emissions rule?

Becker explained that the Biden administration's EPA rule dramatically limiting tailpipe emissions into the next decade — which will push automakers to produce more low-emission electric vehicles and has often been dubbed by Republicans as an EV mandate — is a prime example of a federal agency crafting a regulation that would survive in a post-Chevron world.

"You can bench press the EPA rule and build muscle," Becker said. "They wrote a 1,000-page rule and regulatory analysis document that goes through every aspect of it and explains how it is

justified by the Clean Air Act and how it meets the intentions of Congress when they passed Clean Air Act."

"They build the case within the regulatory documents to prove that this is absolutely justified. It's not something new; it's not a major question. It's not different from the thing that the Congress has required us to do over time," he added. "Basically, there's nothing new here under the sun. We're just doing what we've always done. We're just doing it a little bit more thoroughly to make sure that these pollutants are scrubbed out more than they otherwise would have been."

Loyola of the Heritage Foundation agreed with Becker's assessment that the EPA tailpipe emissions rule may be less susceptible to legal challenges than other major Biden policies, like the administration's new rule on limiting emissions from coal-fired power plants.

But he said the tailpipe rule still has real vulnerabilities.

"It's true that the clean power plant rule is more likely (to be overturned) and has more torpedoes in the water than the vehicle rule," said Loyola, a contributor to Project 2025 — a recent effort by Heritage laying out a more conservative policy vision across government. But he added, "only one of them has to hit to blow up the rules."

He cited an ambiguous definition of "class of vehicle" in Section 202 of the Clean Air Act as one potential avenue for a legal challenge.

"Now that Chevron is gone, the agency's got a more difficult road to hoe. Because what does class of vehicle mean? And can the agency actually include cars that don't have any emissions at all in the same class of vehicle as (Ford) Mustang GTs, for purposes of calculating the emissions rate?" Loyola questioned.

"That's ridiculous," he said. "Because then you have a totally fictitious emissions rate average... You're obviously using an emissions rate that's not meant to lower the emissions rate from Mustang GTs. It is meant to eliminate the Mustang GT," an action he characterized as a clear overreach by the Biden administration.

Steve Bradbury, a former Trump administration official and one of Loyola's Heritage colleagues, laid out additional arguments related to Section 202 in a public comment submitted to the EPA on a draft version of the tailpipe emissions rule.

Summarizing his logic, Bradbury wrote: "Congress has not delegated to EPA the power to force the conversion to electric vehicles."

Safety impacts

Beyond the potential reversal of the country's "strongest ever" tailpipe emission rule, the end of Chevron could impact the auto industry in other important ways.

Cathy Chase, director of the lobbying group Advocates for Highway and Auto Safety, said she is concerned that the end of Chevron will worsen future safety regulations by producing "a chilling effect" that stops agencies from going above and beyond minimum requirements set out in law.

"Agencies will be concerned that by exceeding a congressional mandate, they'll open themselves up to a legal challenge. And that's unfortunate because they have the authority to do so," Chase said. "They're the issue experts. They're the ones who should be making these determinations. It's what they do for a living."

She cited details of a new rule requiring automatic emergency braking technology in new vehicles as an example of the type of safety-improving regulatory action that might not happen in the future.

The recent draft version of the AEB rule for trucks, Chase said, exceeded the congressional directive for such a rule in the 2021 Infrastructure Investment and Jobs Act.

"That requirement did not include Class 3 to 6 trucks, so your small- to medium-sized trucks. But the (draft rule) did," Chase explained. "We're really worried about that, especially considering these are the trucks that are driving through all of our neighborhoods, delivering our e-commerce packages, where children are playing and people are walking their dogs, and these trucks are in a rush to get to their next delivery."

Chase said she is hopeful regulations like that will not be overturned even in the face of legal challenges because the Department of Transportation is "deliberate" and "makes sure they have their ducks in a row" before issuing rules. "But it's a big question mark right now because we just don't know how these things are gonna play out in the courts," she added.

'Playing between the 40-yard lines'

The Alliance for Automotive Innovation, a trade group representing all the major automakers in the United States except for Tesla Inc., declined an opportunity to comment on the end of Chevron deference. The group is usually the industry's primary voice on regulatory matters.

But Roger Nober, director of George Washington University's Regulatory Studies Center and a former regulatory executive at the major train and railroad operator BNSF Railway LLC, offered his overall assessment. He said the end of Chevron deference may have two somewhat conflicting impacts on the auto industry.

Nober said that, in the short term, the elimination of Chevron could result in big changes or court-directed reversal for some significant rules. But he's "not 100% convinced you're going to see a wholesale rampant restructuring of regs."

Beyond that, in the long term, he said the doctrine's end would "scale back the swaying and the regulatory whiplash" between presidential administrations, as was especially pronounced going from former President Donald Trump to President Joe Biden.

"Rather than going from the 10-yard line all the way over to the other 10-yard line, things are going to stay between the 40s," Nober said, using a football analogy. He added that would be "very good for the development and adoption of technology," allowing automakers to more steadily plan.

That era of more regulatory stability is probably years away, though.

For one, several experts and advocates said a Trump victory in the looming November presidential election would still produce major regulatory reversals, albeit not immediately. There is also the slow churn of courts and bureaucracy.

"We know that litigation takes a long time and rules take a long time," Rachel Potter, a political scientist and regulatory affairs expert at the University of Virginia, said during a July 16 panel hosted by the American Enterprise Institute.

An audience member asked how long it would be until the full impacts of Chevron's end start to solidify.

"It's going to be a long time," she replied. "I don't have a specific number in my head, but I'm not counting the days."

<https://www.detroitnews.com/story/business/autos/2024/08/04/end-of-chevron-deference-carries-potentially-vast-impacts-for-automakers/74646744007/>