K&L GATES

QUICK GUIDE: AGENCY DEFERENCE CASELAW

Key

Agency interpreting statute
Agency interpreting regulation
Agency exercising policy judgment

CASE	PRINCIPLE
Skidmore v. Swift & Co., 323 US 134 (1944)	Agency interpretations of statutes are entitled to respectful consideration by courts; they are not controlling but will receive deference to the extent they are persuasive. "The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."
Bowles v. Seminole Rock & Sand Co., 325 US 410 (1945)	An agency interpretation of its own regulation receives "controlling weight" by courts unless that interpretation is "plainly erroneous or inconsistent with the regulation." (Later known as ***Auer* deference** after a 1997 case that reaffirmed the doctrine.)
Motor Vehicle Manufacturers v. State Farm, 463 US 29 (1983)	Agency's decision will be upheld if it is "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 US 414 (2021). Agency must explain the evidence and offer a "rational connection" between the facts found and the choice made when exercising judgment. Agency's factual and discretionary determinations are "**arbitrary and capricious**" if they: (1) rely on factors that Congress did not intend; (2) fail to consider an important aspect of the problem; (3) offer an explanation that is implausible or contrary to the evidence. Otherwise, courts will not second-guess these determinations.
Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 US 837 (1984)	Agencies (not courts) should fill interpretive gaps in statutes they administer; courts will defer to agency's reasonable interpretation of ambiguous statutes. ***Chevron* Two-Step Inquiry*:*** (1) Applying traditional tools of statutory construction, does the statute directly answer the issue at hand? (2) If the statute permits more than one meaning, the court gives controlling weight to the agency's reasonable interpretation, when the interpretation results from the agency's considered judgment (through a deliberative process like notice-and-comment rulemaking).

CASE	PRINCIPLE
Auer v. Robbins, 519 US 452 (1997)	Reaffirmed *Seminole Rock*: Courts must defer to an agency's interpretation of its own regulation unless the regulation is "plainly erroneous or inconsistent" with the language of the regulation itself.
United States v. Mead Corporation, 533 US 218 (2001)	Agency's interpretation (here, based on tariff classifications routinely issued through low-level agency decisions) is not entitled to *Chevron* deference if it does not have the force of law or represent the agency's considered decision at an appropriate level of formality, but it is eligible to claim respect according to its persuasiveness under *Skidmore*.
Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs., 545 US 967 (2005)	*Chevron* deference is appropriate where agency reverses its interpretation of an ambiguous statute, even if a court has upheld the prior interpretation as reasonable, if the new interpretation is also reasonable. Agency deference thus does not depend on the order in which reasonable interpretations reach a court.
FCC v. Fox Television Stations, 556 US 502 (2009)	Reaffirmed *State Farm*'s holding that the APA's arbitrary-and-capricious standard is a "narrow" standard of review and holds that changes in an agency's policy judgment are not subject to a more "searching" review, though the agency must acknowledge and explain the change.
Kisor v. Wilkie, 588 US 558 (2019)	Upheld *Auer* deference but clarified its inherent limits—Court defers to agency's reasonable interpretation after conducting a careful inquiry into whether the regulation is genuinely ambiguous. To receive deference, the agency's interpretation must be its official position, implicating its substantive expertise, and reflecting its fair, considered, and consistent judgment.
West Virginia v. EPA, 597 US 697 (2022)	Announces the "**major questions doctrine**," under which a court can reject new claims of agency authority when—based on history, breadth, and "economic and political significance"—the agency is doing something "extraordinary" not clearly authorized by Congress.
Loper Bright Enterp. v. Raimondo (No. 22-451) & ***Relentless v. Dep't of Commerce*** (No. 22-1219)	**?**