

# The Chevron Deference: The State of Food Safety Regulations

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## FSMA Fridays Webinar Series

Monthly Industry News, Updates & Trends for Food, Beverage, & CPG Manufacturers



**SAFETYCHAIN**

# What is FSMA Fridays?



- ✓ Monthly FSMA Related News
- ✓ Regulation Changes & Updates
- ✓ Industry Trends
- ✓ Q&A with TAG

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# Meet Your FSMA Friday Speaker



## **Eric Edmunds, JD**

Sr. Director, Regulatory Affairs, and General Council

Eric is a food industry expert on food safety, risk management, regulatory compliance, and operational excellence. He regularly works along the farm to fork continuum to help address food safety and regulatory concerns for his clients.



# FSMA: Regulatory Updates

## FDA Unified Agenda:

- Continued focus on FSMA, facility registration
- Standards of identity
- Labeling and claims
- Imported food certification
- Action levels for lead in baby/children's food

## FDA Center for Veterinary Medicine (CVM)

- Guidance based on end of MOU with AAFCO in October





# The Chevron Deference

*Chevron U.S.A. v. Natural Resource Defense Council* (1984)

## Two-Part Test:

1

**Determine if Congress has directly spoken to the precise issue at question**

- If the statute is silent or ambiguous, proceed to step 2

2

**Determine if the agency has used a permissible construction of the statute**

- Is the agency's interpretation reasonable?

# The Chevron Deference: Overturned

*Loper Bright Enterprises v. Raimondo (2024)*

Challenge to rule by the National Marine Fisheries Service

Reasoned that judicial deference to agency rulemaking under Chevron was inappropriate

Administrative Procedures Act (APA)

- Courts “shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action”

Disagreed with Chevron presumption that statutory ambiguities are implicit delegations to agencies

# What Does This Mean?

Wait and see, but don't forget about the Skidmore Deference!

## *Skidmore v. Swift and Company (1944)*

Defer to agency interpretations of the depending on:

1. Thoroughness evident in its consideration;
2. Validity of its reasoning;
3. Its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.



# Going Forward

- Courts will exercise independent judgement
- Introduces some uncertainty
- Challenges would still need to show statute is:
  1. Ambiguous
  2. Agency interpretation is incorrect/unreasonable
- FDA primary jurisdiction
- Timeline for new regulations may be affected
  - Rulemaking procedures, comments, FDA responses



# FSMA 204

1. Pilot projects
2. Data gathering
3. Product tracing system
4. Additional Recordkeeping Requirements for High Risk Foods
5. Evaluation and recommendations
6. Farms
7. No limitation on commingling food
8. Small entity compliance guide and flexibility
9. Enforcement

# FSMA 204

## Now is NOT the time to delay action

- November 2022 – January 20, 2026

## Critical Tracking Events (CTEs) and Key Data Elements (KDEs)

- Internal assessment
  - What do you have, and what do you need?
  - Do systems need to be changed?
- External coordination
  - Who needs to be involved?

# FSMA 204: Resources

## FDA

- Exemptions tool
- Supply Chain Examples
- Compliance Guides

Trade associations

Standards organizations

Low- or no-cost tech enabled traceability



Getting Started with the Food Traceability Rule	▼
Food Traceability List (FTL)	▼
Key Features	▼
Full and Partial Exemptions	▼
Modified Requirements, Exemptions, and Waivers	▼
Critical Tracking Events and Key Data Elements	▼
Supply Chain Examples	▼
Traceability Lot Code	▼
Traceability Plan	▼
Electronic Sortable Spreadsheet	▼
Guidance for Industry	▼
Frequently Asked Questions about the Food Traceability Final Rule	▼
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# FSMA FRIDAY

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# Questions?





# More Resources



Industry eGuides



Webinars & Videos

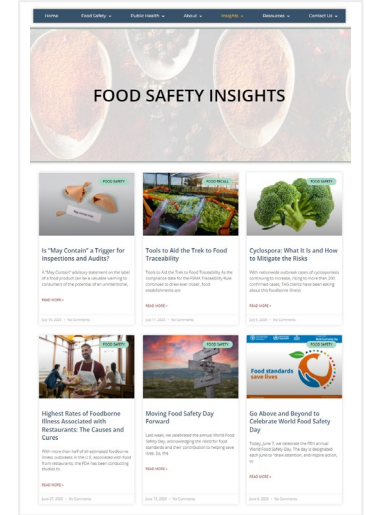


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