

Insights: Alert

Not So Bright--Federal Circuit Sheds Light on Application of Loper-Bright and Appealing Agency Decisions

December 18, 2025

Written by **Aarti Shah** and **Caroline E. Wippman**

The Supreme Court decision in *Loper Bright Enterprises v. Raimondo* vacated Chevron deference, fundamentally altering administrative law, and has already resulted in some longstanding agency rulings being overturned. However, there has been much uncertainty about whether any deference to agencies remained and how and when courts would choose to interpret statutes themselves. In addition, many feared that the decision might lead to dramatic changes at the USPTO and ITC, two agencies whose regulations fill a particularly large number of statutory gaps. The Federal Circuit's en banc December 12 ruling in *Lesko v. U.S.* clarifies that, despite the end of *Chevron* deference, courts will continue to uphold agency regulations grounded in clear statutory delegations, offering greater regulatory stability and fewer potential changes to the practices of agencies such as the USPTO and ITC. The opinion also puts forth a roadmap for both defending and challenging agency rules and decisions in the new landscape.

Background: Why Everyone's Watching *Loper Bright*

The Supreme Court's 2024 decision in *Loper Bright v. Raimondo* turned administrative law on its head. Before *Loper Bright*, courts often deferred to an agency's interpretation of ambiguous statutes—a doctrine known as *Chevron* deference. With *Loper Bright*, that's over: now, courts can interpret the statutes, not the agency. This change quickly led to a flurry of challenges to long-standing agency rules. For example, in *Lashify v. USITC*, the Federal Circuit tossed out years of ITC precedent and made it much easier to meet the “domestic industry” requirement—something that would have been unthinkable before. All of this left observers wondering: Are courts about to sweep away decades of agency rules? Which regulations are safe, and which are at risk? If I am appealing an agency decision, what new arguments can I raise and how successful will they be?

Lesko: The Case and What Happened

In *Lesko v. United States*, a nurse practitioner, Jillian Lesko, brought a class action for unpaid overtime, arguing that Indian Health Service supervisors made nurses work extra hours without giving them written orders. *Lesko v. U.S.*, No. 2023-1823, 2025 WL 3562218 (Fed. Cir. Dec. 12, 2025). The Court of Federal Claims dismissed Lesko's claim by relying on the Federal Circuit's prior decision in *Doe v. United States*, which upheld the requirement that overtime must be authorized in writing under 5 C.F.R. § 550.111(c). In that decision the court deferred to the agency's regulation under *Chevron*, rather than doing independent statutory analysis. Following

the Supreme Court's overruling of *Chevron* in *Loper Bright*, the Federal Circuit decided to take another look at Lesko's case, this time with fresh eyes and without automatic deference to the agency.

The Lesko Decision: What Did the Court Actually Decide?

In *Lesko*, the Federal Circuit addressed whether an agency regulation—specifically, OPM's rule requiring written authorization for federal overtime pay—remained a valid exercise of agency power after *Loper Bright*. The core issue was whether OPM could require written approval when the statute itself (5 U.S.C. § 5542(a)) simply states that overtime must be “officially ordered or approved,” without specifying the form that authorization must take. The court began its analysis by examining the statutory language and history, finding that while Congress clearly intended overtime to be subject to some formal authorization, it did not dictate whether that should be written or oral. The Federal Circuit highlighted that Congress had expressly delegated to OPM the authority to “prescribe regulations...necessary for the administration of this subchapter,” which the court characterized as a broad and flexible grant of rulemaking power. 5 U.S.C. § 5548(a).

The court then applied a two-step framework: *first*, determining whether the agency had clear statutory authority to regulate in this area, and *second*, assessing whether the regulation merely filled in procedural details left open by Congress or went further and altered the substance of the statutory right. The court concluded that OPM's writing requirement was a permissible and necessary administrative measure, serving practical functions. Critically, the court made clear that such “gap-filling” rules, grounded in explicit statutory delegation and necessary for effective administration, remain valid even in the absence of *Chevron* deference.

In *Lesko* the Federal Circuit made clear that an agency's authority to issue binding regulations turns first on whether Congress has expressly delegated rulemaking power to the agency by including broad delegation language in the statute that allows an agency to “fill up the details” left open by the statute. The court explained: “Congress's silence on this issue, in combination with its delegation of authority to OPM to prescribe regulations necessary for administering the overtime statute, clears the path for OPM to fill up the details of the authorization process.”

This analytical approach—first confirming the breadth of the delegation, then determining whether the rule simply fills a gap or goes further—offers a practical roadmap for analyzing or challenging the validity of agency rule, including in intellectual property agencies like the ITC and USPTO. Importantly, the decision directly addresses concerns among practitioners that *Loper Bright* might trigger a wave of judicial reversals of longstanding agency rules.

Implications for Litigation Strategy and Appeals from Agency Decisions

The *Lesko* decision makes clear that, even after *Loper Bright* eliminated *Chevron* deference, courts will not invalidate agency rules across the board. Instead, judges will closely examine whether Congress gave the agency clear rulemaking authority, particularly authority to “prescribe regulations necessary for administration,” and whether the regulation in question is simply filling in procedural or administrative gaps left open by the statute. If those conditions are met, the regulation is generally less likely to be overturned.

This approach has direct relevance for the ITC and USPTO, as both agencies have unusually broad statutory grants of rulemaking authority. For example, the ITC is empowered by 19 U.S.C. § 1335 to adopt “such reasonable procedures, rules, and regulations as it may deem necessary to carry out its functions and duties,”

and by 19 U.S.C. § 1337(k) to “prescribe rules and regulations” for Section 337 cases. The USPTO, likewise, has broad authority under 35 U.S.C. § 2(b)(2)(A) to “establish regulations, not inconsistent with law, for the conduct of proceedings in the Office,” and is specifically directed to “prescribe regulations” for its administrative trial procedures under 35 U.S.C. §§ 316(a) and 326(a), as well as for trademarks under 15 U.S.C. § 1123. Under the *Lesko* analysis, these kinds of express, flexible delegations are precisely what most shield agency rules from sweeping judicial reversal. For the ITC and USPTO, this means that the majority of regulations governing procedures, investigations, and case management—especially those core to their statutory mandates—are well insulated from being struck down on procedural grounds.

However, *Lesko* also reminds us that there are limits. Agency rules may still be vulnerable if they exceed the bounds of their statutory delegation, lack a convincing administrative justification, or attempt to create substantive obligations not contemplated by Congress. For those appealing or fighting agency decisions, this shifts the focus: challenges to agency rules should target whether the agency actually had the statutory authority to issue the rule, and whether the rule is truly necessary for administration or instead goes beyond what Congress authorized. The battleground for agency rule challenges is now firmly rooted in the statutory text and the necessity of the regulation, rather than broad attacks on agency discretion.

Practical Impact and Next Steps

Ultimately, *Lesko* represents a substantial walk-back from the broad implications feared after *Loper Bright*. In practical terms, *Lesko* provides welcome clarity and stability for businesses and counsel who rely on established ITC and PTO procedures, as well as providing a roadmap for those seeking to overturn agency decisions.

Related People



Aarti Shah

t 202.481.9937

ashah@ktslaw.com



Caroline E. Wippman

t 415.273.7594

cwippman@ktslaw.com