



Recommendation 89-5

Achieving Judicial Acceptance of Agency Statutory Interpretations

(Adopted June 16, 1989)

Agencies continually interpret the statutes they administer. Their interpretations are expressed in a great variety of formats—including, among others, legislative regulations, adjudicatory opinions, court briefs, interpretive rules, policy statements, staff instructions, correspondence, informal advice, press releases, guidance manuals, testimony before Congress, speeches, and internal memoranda. This recommendation addresses the relationship between the procedures used by an agency in interpreting a statute and the role of the courts in statutory interpretation.

Interpretation of a statute presents a question of law, traditionally the province of the judicial branch (see the scope of review provision of the APA, 5 U.S.C. 706). However, for many years courts have accorded respectful attention or even controlling effect to interpretations of statutes made by the agencies that administer them. In some situations, in which the courts reserve the power to arrive independently at their own interpretations, they will give respectful consideration to an agency's construction but may reject it, even if it seems reasonable. In other cases, courts consider themselves bound to accept an agency's interpretation outright, provided only that it is consistent with the statute and is reasonable. The law governing judicial acceptance of agency statutory interpretations is now dominated by *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). In that case, one involving legislative rulemaking, the Supreme Court laid out a general framework for reviewing agency interpretations of statutes. First, the court is to determine whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, the court (like the agency) must give effect to the congressional intent. Where Congress' intent is not clear, however, the court must determine whether the agency's interpretation is based on a reasonable construction of the statute. *Chevron* thus requires a reviewing court to accept an agency interpretation that (a) is not contrary to statute or specific statutory intent and (b) is reasonable.

When an agency issues a legislative rule or interprets its statute in a formal adjudication, its interpretation of the statute it administers is entitled to judicial acceptance under the *Chevron* standard. Similarly, acceptance under the *Chevron* standard is appropriate if the reviewing



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court finds a congressional delegation of authority to make definitive interpretations in an informal format such as the informal agency staff ruling involved in *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555 (1980). But agencies rarely possess congressionally delegated authority to make definitive interpretations, carrying the force of law, by informal means. Thus, when an agency states its interpretation of a statute in an informal format, it should understand that courts ordinarily will not be bound to accept such an interpretation.

This is not to say that reviewing courts may ignore an agency interpretation set forth in an informal format. Numerous decisions of courts at all levels indicate the views of the agencies charged with responsibility for administering a statute are accorded weight and may be highly influential in shaping courts' decisions. In this way courts retain the advantage of administrative agencies' expertise and remain free to adopt agencies' interpretations, even though not required to do so.

Even when interpretations are expressed informally, however, agencies have in some instances successfully asserted that these interpretations should be accepted as definitive by the courts, without consideration of whether the agency possesses the authority to make binding interpretations in the format it has used.

When an agency interprets a statute without using procedures authorized by Congress for the development of definitive statutory interpretations, it should not expect that its interpretation will be entitled to judicial acceptance as definitive. Procedures so authorized by Congress, in almost all cases, will be relatively formal ones that ensure some level of public participation and encourage reasoned and thoughtful decision making by the agencies. However, this recommendation is not intended to discourage agencies and their staffs from using informal means to keep the public apprised of their views on questions of statutory interpretation. It is often useful and appropriate for agencies to provide informal guidance of this type. The agency may reasonably expect interpretations like these are entitled to such special consideration as their nature and the circumstances of their adoption warrant. But it is important for both agencies and courts to remember these informal expressions should not be accorded the same weight as definitive agency interpretations.

This recommendation relates solely to the procedures that should be preconditions to agencies' assertion of the *Chevron* standard of review. It thus takes no position concerning any other aspect of the *Chevron* standard.



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Accordingly, the Administrative Conference recommends that the following process be observed.

Recommendation

In developing an interpretation of a statute that is intended to be definitive, an agency should use procedures such as rulemaking, formal adjudication, or other procedures authorized by Congress for, and otherwise appropriate to, the development of definitive agency statutory interpretations.

Citations:

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