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A Balance in Power — Overturning the Chevron doctrine could affect the roofing industry

In June, the Supreme Court issued a decision in the case of *Loper Bright Enterprises v. Raimondo* that overturned the long-standing Chevron deference doctrine. The judicial doctrine arose from a 1984 decision in which the high court had ruled, in the case of *Chevron U.S.A. Inc. v. National Resources Defense Council Inc.*, that courts should defer to federal agencies in legal challenges to regulatory decisions in situations where the governing statute is ambiguous and the agency's action is reasonable.

The basic reasoning in the Chevron case was administrative agencies possess more expertise in the subject matter being regulated compared with the judges who rule on legal challenges to regulations. During the past 40 years, courts have generally followed this directive and deferred to agency determinations in regulatory matters unless it was clear legal authority had been exceeded.

In the *Loper Bright Enterprises* case, a 6-3 majority of the Supreme Court ruled courts have an equal role in resolving disputes regarding regulatory matters when ambiguities in the law are present.

"The Farmers anticipated that courts would often confront statutory ambiguities and expected courts would resolve them by exercising independent legal judgement," Chief Justice John Roberts wrote in the decision. "Chevron gravely erred in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play."

This ruling shifts considerable power from the executive branch to the judicial branch of the federal government.

With the *Loper Bright Enterprises* ruling in place, courts no longer will be required to defer to administrative agencies when considering legal challenges to agency

regulatory actions. Judges will have the discretion to exercise independent judgement on individual cases. This could greatly increase the chances of success when private sector entities, such as businesses or trade associations, challenge regulations in court.

The decision could affect a wide array of regulatory activity. Labor and employment law is one area expected to be affected and the Department of Labor may alter how it develops and enforces regulations in the future.

Moreover, the dismissal of Chevron deference could directly affect existing legal challenges to recent DOL regulations, including the agency's independent contractor rule issued in 2023 and its rule modifying how employees are subject to overtime compensation requirements under the Fair Labor Standards Act. Also, the ruling is expected to significantly affect environmental and climate-related regulations issued by the Environmental Protection Agency.

One example of particular interest to NRCA members is a regulation issued by the Occupational Safety and Health Administration modifying the procedures under which workplace inspections are performed, which took effect in May. When OSHA originally proposed the rule, NRCA and allied construction associations filed comments outlining concerns on behalf of their members, but OSHA failed to make any accommodations before issuing its final rule. A lawsuit has been filed by a coalition of business groups challenging the rule on the grounds the agency exceeded its authority under the Occupation Safety and Health Act of 1970 when issuing the regulation. The chances for a favorable ruling for the plaintiffs on this lawsuit may have improved with the overturning of Chevron deference.

With more legal scrutiny of regulations from the courts, another potential implication of the *Loper Bright Enterprises* decision is agency officials may come under pressure to refrain from exceeding their legal authority when developing regulations. NRCA hopes removing the Chevron deference provides greater incentives for agency officials to work cooperatively with stakeholders to issue balanced regulations that are less burdensome rather than proceeding despite objections and then fighting in court.

The *Loper Bright Enterprises* decision has implications for the legislative branch, as well. It may put more responsibility on Congress to be more precise when drafting, enacting and amending laws that provide the authority for agencies to issue regulations. The tendency of Congress to delegate authority to administrative agencies through ambiguous laws has been a decades-long phenomenon that has diminished the power of the legislative branch while increasing the power of the executive branch. Congress can seize back the power it has ceded, but the *Loper Bright Enterprises* decision may provide increased opportunities for congressional action. Republicans in Congress are looking at how the ruling can help them advance a more deregulatory agenda.

It will be interesting to see how much of an effect the Supreme Court's landmark decision has on regulatory policy in the near future. NRCA will be monitoring this issue closely as we continue fighting for more sensible, less burdensome regulations on behalf of our members.

Duane L. Musser—NRCA vice president
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Significant Changes to Paid Sick Time Coming Soon February 2025

In 2018, the Michigan Legislature adopted a ballot initiative providing for a paid sick time statute (originally titled, Earned Sick Time Act or ESTA).

Rather than enacting without change, the Legislature substantially amended the ballot initiative and enacted such amended initiative into law. This action ultimately resulted in litigation to determine whether the Legislature's action was lawful.

On July 31, 2024, the Michigan Supreme Court published its long-awaited opinion in *Mothering Justice v. Attorney General*. The Court held the Legislature's adopt-and-amend approach as unconstitutional, and accordingly will reinstate the original initiative, with an effective date of February 21, 2025.

There remains a possibility that the Legislature could amend the ESTA during this session and therefore modify the requirements imposed on employers. In fact, a Senate Bill has been proposed which would revert the ESTA back to the language of Michigan's Paid Medical Leave Act (PMLA). It remains to be seen whether the Legislature will act on this proposed bill, or any other bills related to the ESTA during this session.

In the meantime, however, Michigan's Wage and Hour Division is anticipated to release proposed regulations to interpret and help clarify the provisions of the ETSA.

Changes to Paid Sick Leave

If the Legislature does not amend the ESTA prior to its implementation, the changes to Michigan's paid sick leave statute will be substantial. Previously, only certain employers with 50 or more employees were required to abide by the provisions of Michigan's PMLA. Now, beginning February 21, 2025, all Michigan employers, regardless of size, will be subject to the provisions of the Earned Sick Time Act.

The ESTA will entitle all employees to accrue one hour of earned sick time for every thirty hours worked (as opposed to one hour for every 35 hours worked under the PMLA). Further, employers must allow employees to use up to 72 hours of sick time in a given year. For employers with ten (10) or more employees, all 72 hours of sick time must be paid. For employers with fewer than ten (10) employees, only 40 hours of sick time must be paid, but the remaining 32 hours must be allowed to be taken as unpaid sick time.

Employers will need to comply with the numerous other changes required by the Earned Sick Time Act, including the expansion of the reasons for which employees can use paid sick leave, the expanded definition of "family member," extended retention requirements, additional notice requirements, and changes to when employers can require supporting documentation, among others.

Next Steps for Employers

To prepare for the ESTA, employers will need to revise their paid sick leave policies, train human resource professionals regarding compliance with the new requirements, and otherwise familiarize themselves with the requirements of the restored ballot initiative.

For these reasons, we encourage all Michigan employers to consult with their labor and employment counsel to determine and implement necessary changes to their respective workforces.

By: Olivia V. Hankinson
Kerr Russell
October 29, 2024

Corporate Transparency Act (CTA)

Effective January 1, 2024, the Corporate Transparency Act (CTA) and its administrative rules will require many companies to report information about their beneficial owners to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of Treasury. The deadline to file the CTA Report for existing reporting companies (created/registered prior to January 1, 2024) is **no later than January 1, 2025**.

To file the CTA Report, a reporting company will file electronically via an online interface FinCEN www.fincen.gov.

CPWR offers tips on nanomaterial exposure control

CPWR—The Center for Construction Research and Training has published a fact sheet detailing how to protect workers handling products containing nanomaterials.

Nanomaterials feature at least one dimension that is smaller than 100 nanometers. The center notes nearly 1,000 commercial construction products, including cement, adhesives, paints and coatings, contain engineered nanomaterials.

Although nanomaterials are shown to improve the performance of products, the dust or mist produced when materials are cut, sanded or sprayed may be ingested or enter openings in the skin.

"Workers sometimes worry these small particles will slip through filter or respirator cartridges," CPWR states in the fact sheet. "That isn't the case if the filters and respirator cartridges are used correctly."

The organization also recommends local exhaust ventilation or wet methods, and amending work methods to help control bystander exposures.

CPWR adds that the Occupational Safety and Health Administration's updated standard for hazard communication "should improve" safety data sheets for nanomaterials "by requiring manufacturers to disclose information about particle characteristics, such as particle size."

Professionalroofing.net

Birthday Wishes



Anthony Schena - Schena Roofing & Sheet Metal Co., Inc.
October 7

Pat Fritsch - Roofing Products of Michigan, Inc.
October 16

Joe Bieszki - Architectural Building Specialties, Inc.
October 26

Brian Davis - Lutz Roofing Company, Inc.
November 9

George Schena - Lifetime Member
November 13

Jim Coppens - Mid Michigan Roofing
November 15

Brian Moore - Schreiber Corporation
November 29

Roger LaDuke - LaDuke Roofing & Sheet Metal
December 13

Kathy LaDuke - LaDuke Roofing & Sheet Metal
December 21

Happy Anniversary



Anthony & Kristy Schena - Schena Roofing & Sheet Metal Co., Inc.
October 12

Chuck & Dee Rosa - Lifetime Member
October 16

Steve & Lisa Yontz - L.T. Ollesheimer & Son, Inc.
October 17

Deepest Sympathy



Our deepest sympathy's are extended to the family and friends of:

John D. Doyle
Retired Business Manager Roofers Union Local 149

And

Charles D. Boom
Retired Owner of J & L Roofing Company

Save the Date

Great Lakes Design and Construction Expo

February 12, 2025
Novi, MI

Learn more: www.miconstructionexpo.com

International Roofing Expo 2025

February 19-21, 2025
San Antonio, TX

Learn more: www.theroofingexpo.com

JATC Training Center Happenings

Journeyworkers upgrade classes to improve your skills, your worth, and our Brotherhood/Sisterhood is available at no cost to all Detroit LU 149 members.

Dues must be current in order to enter the Training Center.

If you are interested in any of these classes, contact Thomas Jaranowski at the Training Center, 248-543-3847, or TJaranowski@DetroitRoofers.org to make arrangements.



The 988 Lifeline provides 24/7, free and confidential support for people in distress, prevention and crisis resources for you or your loved ones, and best practices for professions in the United States.

An Updated FM

The insurance conglomerate has rebranded itself and implemented some changes

FM (previously FM Global) and its code-approved testing and certification business unit, FM Approvals, have undergone rebranding and implemented several updates to their services and guidelines. Because the two entities are sometimes referenced in roofing projects' construction documents, these changes could affect you.

Rebranding

On July 17, FM announced an update to its brand, including a new name; logo; tagline, "Protect Your Purpose"; and website, fm.com

FM is the parent brand for its flagship mutual commercial property insurance company and FM Affiliated, FM Approvals, FM Boiler Re, FM Cargo and FM Renewable Energy.

FM Approvals' brand and logo also have been updated, but its FM name and certification mark are not changing. FM Approvals indicated the brand evolution has no effect on its certification mark, existing tested or certified products, or products that successfully complete testing and certification in the future. No action is required on users' part.

Updated RoofNav

On May 6, FM Approvals launched an updated version of its online RoofNav application. This is the first major overhaul since RoofNav was released in 2001.

Most notably, RoofNav has a different appearance from the previous version. Icons are provided on the top right-hand side of the home screen for RoofNav number access, assembly search, ratings calculator, product search, help and reference documents and save functions. Also, RoofNav's assembly search capability is substantially improved and includes progressive filtering functionality.

RoofNav is accessible at roofnav.com.

Interior debris protection

In July 2022, FM Approvals published a new standard specific to interior debris barrier systems, FM 4652, "Examination Standard for Debris Barriers." The standard provides criteria for interior fire-exposure testing and evaluating melt-out or drop-out properties of debris barriers around fire sprinklers. Criteria also are provided for manufacturing, installation, maintenance and repair instructions of debris barrier systems; demonstrating quality control programs; and surveillance audits.

To date, two companies and three products have been approved by FM Approvals based on FM 4652. Reportedly, several other manufacturers or suppliers are in the process of obtaining approvals.

The approvals of debris barrier systems are listed in FM Approvals' online approval guide, accessible at approvalguide.com. Approved debris barrier systems are best found by typing "FM 4652-Debris Barriers" in the website's search function. Debris barrier systems are not included in RoofNav.

FM 4652 is not referenced in any model fire or building codes. Reference to FM 4652 has been added to the latest edition of FM's Loss Prevention Data Sheet 1-0, "Safeguards During Construction, Alteration, and Demolition."

FM recommends debris barrier systems be included during construction of FM-insured, highly protected risk, limited combustible loading, HC-1 and HC-2 occupancies. Additional information about FM's building, loading and occupancy categories is included in FM Loss Prevention Data Sheet 3-26, "Fire Protection for Nonstorage Occupancies."

FM Loss Prevention Data Sheets are available at fmglobaldatasheets.com.

Mark S. Graham—NRCA vice president
of technical services
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NRCA launches Spanish membership site

NRCA has announced the launch of its new membership category available exclusively in Spanish. This initiative marks a milestone in NRCA's ongoing efforts to better serve the Spanish-speaking roofing community.

The new membership site is designed to provide essential business knowledge and a wide range of benefits tailored to the unique needs of Spanish-speaking business owners and workers. The content includes educational resources, videos and products in categories such as finance, legal business, operations and planning, professional certifications, safety and training.

Current NRCA members can access Spanish-only content for free by logging into their NRCA accounts. For more information, go to spanish.nrca.net or contact membership@nrca.net.

DOL announces final rule updating Hazard Communication Standard

In May 2024, the Department of Labor announced a final rule from its Occupational Safety and Health Administration that will update the current Hazard Communication Standard to better protect workers by improving the amount and quality of information on labels and safety data sheets, which allows workers and first responders to react more quickly during an emergency according to OSHA. The update took effect in July 2024.

Aligned primarily with the seventh revision of the United Nations' Global Harmonized System of Classification and Labelling of Chemicals, the updated standard requires labels on small packaging to be more comprehensive and readable and makes changes to help ensure trade secrets no longer prevent workers and first responders from receiving critical hazard information on safety data sheets; updated physical hazard classes to better inform users regarding safe handling of explosives, aerosols and chemicals under pressure; and updated precautionary statements about how to safely handle, store and dispose of hazardous chemicals.

OSHA's previous Hazard Communication Standard update, published in 2012, was the first to align with GHS. That final rule incorporated the third revision to provide a common and coherent approach to classifying chemicals and communicating hazard information.

Safety+Health magazine reports employers using products covered under the standard must update their hazard communication programs, labeling and employee training by July 26, 2026, or Jan 19, 2028, depending on substances or mixtures. Until those dates, employers can comply with the old or new standard, or both.

The Hazard Communication Standard provides a standardized approach to workplace hazard communications associated with exposure to hazardous chemicals. All employers with hazardous chemicals in their workplaces must have labels and safety data sheets for their exposed workers and train them to handle the chemicals safely.

Roofing Day in D.C. 2025

Join fellow roofing professionals on Capitol Hill as we advocate for our industry! Congress must see and hear from you to understand the critical issues we face. Together, we can make a difference.

To foster an educational and collaborative experience, Roofing Day in D.C. features expert speakers and panelists to inform and inspire attendees, who participate in an afternoon of meetings with their members of Congress and their staffs. Attendees have ample opportunity to network and connect with fellow professionals and are encouraged to bring key employees to the event.

Mark your calendars for Roofing Day in D.C. 2025 April 8-9!
Registration opens in January 2025.

EPA announces labels for green construction materials

On Aug. 7, the Environmental Protection Agency announced its plan to implement a new label program to help customers identify climate-friendly construction materials for federal building, highway and infrastructure projects, according to an EPA press release.

The program will prioritize asphalt, concrete, glass and steel, and offer a tiered rating system, taking into account the life cycle emissions associated with construction material production. Materials that earn the label will be listed in a public registry.

The agency anticipates labeling requirements for each product type will be periodically reviewed and updated every two to four years to respond to market shifts and help users meet sustainability objectives.

Additionally, the EPA issued supporting documents to help implement the program, including Product Category Rule Criteria, which are guidelines for developing environmental product declarations to communicate environmental effects of products. Other documents outline key remaining data gaps, provide a methodology for assessing life cycle data quality and describe other federal data quality improvement activities.

The documents are available at [epa.gov](https://www.epa.gov).

OSHA launches Severe Injury Report dashboard

The Occupational Safety and Health Administration has released the Severe Injury Report dashboard, an online tool that allows users to search its severe injury report database and view trends related to workplace injuries occurring in states covered by federal OSHA.

According to OSHA, users can search and download data by year, industry, state, establishment name and Occupational Injury and Illness Classification System codes. The dashboard includes information about all severe injuries reported by employers covered under federal OSHA since 2015.

OSHA is encouraging workers and employers to use the dashboard to learn how severe injuries happen in their industries and use the agency's available resources to help prevent workplace injuries. More information about OSHA's severe injury report data and the severe injury reporting requirement is available at [osha.gov/severeinjury](https://www.osha.gov/severeinjury).

SMRCA Spells the Best in Roofing Services

- S**AFETY A safe jobsite is assured because SMRCA crews complete the M.U.S.T. Safety Training and Drug Testing.
- M**ULTIPLE SERVICES A SMRCA Roofing Contractor has the ability to provide the roof you need because of our expertise in a variety of roofing applications and techniques.
- R**ELIABLE SMRCA Contractors are Union trained professionals bringing an Industry leading standard of service, quality and knowledge to every project.
- C**ONFIDENCE Projects completed by SMRCA Contractors provide a Michigan roofing contractor 2 year standard workmanship warranty.
- A**CCOUNTABILITY SMRCA Contractors are established companies with years of experience in providing responsive service, superior workmanship and exceptional value.

Call us today at 586-759-2140 to receive our free "Roofing Facts" brochure or contact one of the SMRCA Contractors below for a no-cost estimate on your next roofing project.

Southeastern Michigan Roofing Contractors Association Members

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Rochester Hills, MI
(248) 852-9255
www.tfbeck.com

LUTZ ROOFING COMPANY, INC.

Shelby Twp., MI
(586) 739-1148
www.lutzroofing.com

ROYAL ROOFING COMPANY

Orion, MI
(248) 276-ROOF (7663)
www.royal-roofing.com

J. D. CANDLER ROOFING CO., INC.

Sterling Heights, MI
(734) 762-0100
www.jdcandler.com

M.W. MORSS ROOFING, INC.

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SCHENA ROOFING & SHEET METAL CO., INC.

Chesterfield, MI
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www.schenarroofing.com

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St. Clair Shores, MI
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www.cdetroit.com

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Pontiac, MI
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www.newtoncraneroofing.com

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Wixom, MI
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www.schreiberroofing.com

DETROIT CORNICE & SLATE COMPANY

Ferndale, MI
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www.detroitcorniceandslate.com

NORTH ROOFING COMPANY

Auburn Hills, MI
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LADUKE ROOFING & SHEET METAL

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