Usually, you'd expect a regulated industry to applaud an effort to lighten its regulatory burdens. So you would think that the car industry would support Trump's effort to roll back fuel efficiency standards for new vehicles and take away California's authority to set its own vehicle standards. But that effort is being met by silence in some cases and vocal opposition in others. According to E&E News, "senior officials from EPA and the National Highway Traffic Safety Administration . . . told automakers to support the rollback or risk angering President Trump by siding with California's more stringent tailpipe emissions rules. But since the call, not one automaker has issued a statement of support." Some, like Ford, remain openly opposed to the rollback, which attempts to freeze federal fuel efficiency standards and oust California from setting its own standards.

One reason for the industry's lack of enthusiasm is probably doubt that the rollback will actually succeed. In fact, the odds are good that the rule will not survive litigation. California has some good arguments that the waiver it received during the Obama Administration, which empowered it to set its own standards, is irrevocable. In addition, the preliminary version of the Trump rule is riddled with problems, including improbable and even inconsistent assumptions. I've blogged about that recently here.

Industry has another major reason to be unenthusiastic. Even if the courts ultimately uphold the rollback, any actual benefit to industry might not be felt for years, if at all. Litigation is slow, and until it ends, the industry can't safely rely on the rollback in making future manufacturing plans. If the Trump rollback is invalid, California might even at that point seek penalties from car manufacturers for noncompliance with California standards during the litigation. That would raise an interesting legal question: if the government tries to revoke an existing regulation, can companies ignore the regulation during the time between the issuance of the revocation and its invalidation by a court?

Even apart from possible penalties, the industry clearly can't plan future vehicle models on the assumption that the rollback will be held valid. Designing and tooling up for a new car model is also slow (maybe 3 years), so there's a further lag time before changes in industry plans can be reflected in actual vehicle production. By then, there's a good chance that we'll have (or will get soon thereafter) a President who would repeal the rollback and revalidate California's regulatory authority.

In the meantime, states like California would use whatever other tools they have, including government car purchases and electrification subsidies, to counter the rollback. Thus, with

Trump's rollback attempt, the industry is getting a lot of regulatory uncertainty with at best a small, delayed payoff. In other words, there's going to be an extended period of time where it will be risky for the industry to take much advantage of the rollback. Moreover, Trump's efforts may make it harder for the industry to work with a future President and California to set new standards for the second half of the 2020s.

At least, you might think, the car companies are no worse off than they would have been if Trump had never tried. But that's not necessarily true. One possibility is that a court might uphold the rollback of federal standards but not the effort to eliminate California's waiver. That would leave the industry subject to two different sets of vehicle emissions and mileage standards within the US, which is a serious cost. More importantly, the industry will already need to make major capital investments because of technological changes (electric vehicles and autonomous ones). Trump's creation of regulatory uncertainty isn't helpful at a time when the industry will be making billion-dollar bets.

Below, I run through the likely litigation schedules to show just how long the whole process would take even if the Trump Administration's rules are ultimately upheld in full.

The Litigation Timetable

If you're interested, here is what the litigation schedule would be like if the Administration is lucky. Let's assume that the rule is finalized in March-April. Here's how things play out in litigation assuming that the process moves relatively quickly. The operative word here is "relatively," not "quickly."

Aug.-Sept. 2019 ***Oral argument in D.C. Cir.*** That may be optimistic. It can take four months just to get cases fully briefed, which would already bring us to July-Aug.

Dec.-Jan. 2019/2020 ***DC Cir. decision*** This is very likely an underestimate because it is based on the average time for all civil cases. But this will be a complex case with lots of technical disputes and a large record. In fact, based on a quick check, it seems not uncommon for 1-3 years to go by between a major EPA decision and the opinion in the D.C. Circuit. So the D.C. Circuit decision could even be as late as September 2022, well into the next presidential term. But I'll continue on the assumption that the Dec.-Jan. 2019/2020 estimate holds.

April 2020? ***Cert. or en banc petitions resolved*****.** Add 6-12 months if the Court

decides to hear the case. Depending on how quickly the D.C. Circuit moves, this could be as late as 2021 or even 2022. The court could throw out the entire rule, or it could uphold the basics but send many more detailed questions back to EPA when it remands the case.

This is just about the best case scenario for the Administration: the rule is upheld and moves expeditiously through the litigation process. Even under these assumptions, the car industry cannot be sure of the legal situation until late 2020 *at best*. There's about two to three year lag between the start of car design and manufacture of a new model. That means that until at least 2022 and maybe 2023, the industry may need to comply with the Obama rules and the California standards in case the Trump rollback fails. By then, the industry may have gotten up to the requirements of the 2024 and 2025 standards anyway. You'll notice at this point we are well past Trump's first term and in the second half of the next presidential term, with another election coming up in 2024. If there are delays, it could be even further down the road before car companies would be completely safe in avoiding the Obama and California rules.