After months of delay, the Trump administration has reportedly chosen this coming week—in the middle of a nationwide crisis due to the COVID-19 pandemic—to finally release the second part of its two-part rollback of Obama-era automotive fuel economy standards. This isn't the only environmental rollback action the administration is planning to take during the coming weeks. Like the other planned regulatory rollbacks, Part 2 of the SAFE Rule will have serious consequences for the environment, public health, and even consumers' pocketbooks.

The SAFE Saga

Before diving into the contents of SAFE Part 2, the long and convoluted rollback process deserves a brief recap. The saga began way back in 2018, when the Trump administration's EPA and NHTSA jointly released a draft of the SAFE Rule that would have frozen federal fuel economy standards at 2020 levels through 2026, while simultaneously revoking California's waiver to set its own tailpipe emissions standards and zero-emission vehicle mandate. That initial rulemaking proposal stood on very shaky ground, both legally and technically: EPA has no statutory authority to revoke an already-granted waiver, and technical analyses of the rule showed the assumptions driving the administration's claims of cheaper and safer cars were significantly flawed.

As the agencies went back to the drawing board after receiving over half a million comments on the proposed rule, House Democrats, now in the majority following the 2018 midterms, organized Congressional hearings questioning the wisdom of the rollback. Representatives of the automotive industry, the State of California, and consumer advocacy groups all agreed: The proposed rollback was flawed and should be revisited. Yet the administration continued to refuse to negotiate with California, which, anticipating the administration's action, entered into a deal with four major automakers (comprising about one-third of the U.S. auto market) in which the automakers agreed they would recognize California's regulatory authority and comply with a set of standards that were slightly less stringent than the Obama-era standards, but still far more stringent than the proposed rollback.

By the end of the summer of 2019, it was widely rumored that the administration planned to bifurcate the original rule—likely due to the incredibly weak technical arguments for a fuel economy freeze—and move forward with waiver revocation in advance of rolling back the federal fuel economy standards. In September 2019, the administration did just that, revoking California's waiver for the first time in the history of the federal Clean Air Act. Styling the waiver revocation as "Part 1" of the final SAFE Rule, the administration promised that a rollback of the Obama-era fuel economy standards was forthcoming. The administration began hinting that the rollback would not be a full freeze of the standards as initially proposed, but instead would reduce the requirements for year-over-year improvement in fuel economy. Meanwhile, over 20 states promptly sued to challenge Part 1 of the rule; the Part 1 announcement also formed rifts within the automotive industry, as the four automakers who had agreed to the California deal notably extricated themselves from trade association actions supporting Part 1. Legal challenges to Part 1 are ongoing and are unlikely to resolve this year.

That brings us to today…about 18 months after the release of the original proposed rule. Whew!

<u>The Not-So-Magic 1.5</u>

An advance draft of Part 2 obtained by House Democrats appears to confirm what the Wall Street Journal reported last year: The administration will be proposing annual fuel economy improvements of 1.5% per year. This stands in sharp contrast to the Obama-era standards' required annual improvements (which fell in the 4-5% range)—and comes at a huge cost to the public. Technical analyses of Part 2's proposed fuel efficiency requirements don't fare much better than the original rule did. Instead, the numbers show that while the sticker price of cars may drop in the short-term, as with the full freeze, long-term fuel consumption costs to consumers will outweigh those short-lived benefits. And that doesn't even take into account the significant public health cost of the rule, as deaths and hospitalizations rise due to increased emissions, or the rule's disastrous consequences for climate change.

To add insult to injury, despite the administration's claims of industry hardship in meeting Obama-era standards, some automakers are already outperforming the Obama-era standards. And the 1.5% requirement even falls short of what industry would achieve absent any regulation at all—an estimated 2% annual improvement in fuel efficiency. In essence, SAFE Part 2 is as good as no rule at all. It is also woefully inadequate to promote electric vehicles as a meaningful percentage of automakers' overall fleets, and we know from experience in California that regulatory action is both necessary and successful in spurring on wider public acceptance of this technology.

As Ann has written, the good news is that the weak technical bases for Part 2 will make the rule easier to challenge in court. Because the administration is seeking to roll back earlier agency action, the Administrative Procedure Act requires a justification of the change in course. The administration will have to engage in some fancy footwork to dodge the solid administrative record from the Obama-era rulemaking, analyses that demonstrate the continued viability of those standards, and more recent assessments showing serious flaws in the Part 2 proposal.

And what about that California deal with the four automakers? Let's call it a meaningful middle ground. That deal requires annual fuel economy increases of 3.7%, far more than Part 2 requires and not too far off from Obama-era requirements. Up to 1% of that annual increase requirement can be offset with electric vehicle credits, which promotes EV use but could result in less fuel-efficient cars throughout auto fleets. A Consumer Reports assessment of the deal against a federal fuel economy standard setting a 1.5% annual increase shows that consumers are better off with the California deal, even if only the four currently-committed automakers, rather than the entire industry, participate. That being said, the Obama-era standards are still best for consumers: This analysis shows a net loss to consumers of at least $100 billion relative to the Obama-era standards.

What's Next?

As with Part 1 of the rule, Part 2 is likely to draw swift legal challenges—which will not resolve before the 2020 election. And Part 2's release may create an even more defined line in the sand between automakers. To date, the trade association line has been that the association hasn't seen the final fuel economy rollback proposal and isn't taking an official position. But once the rule drops, the schism within the industry association may deepen.

As always, California will remain a critical piece of the puzzle, on the front lines of the still-raging battle over tailpipe emissions and fuel economy standards.