



Consumer Federation of America

TESTIMONY OF MARK N. COOPER, SENIOR FELLOW

ACCOUNTABILITY OF OPEC:
NO OIL PRODUCING AND EXPORTING CARTELS ACT (NOPEC)

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW

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THE SOLUTION TO THE OIL IMPORT PROBLEM LIES ON THE DEMAND-SIDE

In his State of the Union address in 2006, George Bush, a Republican, oilman from Texas, declared that America is addicted to oil. Prices were extremely high and policymakers focused a great deal of attention on how to respond.

One idea that always comes up at moments like that is NOPEC. NOPEC is a fabulous idea. It would be truly fabulous, wonderful, if we could sue the members of the oil cartel break their ability to administer oil prices, and stop the drain of hundreds of billions of dollars of monopoly rents out of our economy.

Unfortunately, I must use the word fabulous in its full meaning. The first definition of fabulous in my copy of the Merriam Webster dictionary is an adjective described as “given to telling fables.” The second definition adds “not real, actual or historical.” The third definition elaborates on the nature of “the content of in being marvelous, incredible, absurd, extreme, exaggerated, or approaching the impossible.”

If the members of OPEC were companies, our antitrust laws would have put a stop to the illegal administration of prices half a century ago. But, they are not companies--they are sovereign nations. Even if you had the legal right to sue them, I doubt you would have had the political will to do so. In other words, in reality, there is little chance of delivering this benefit to consumers and the economy.

There another sense in which the benefit of suing OPEC is fictional. The tendency for consumption to increase with population and economic growth interacts with the extremely skewed distribution of a low cost resource in the world so that, over time as world oil demand grows, those same oil producing nations would find it in their interest to drive the price up, without officially administering it. It is called conscious parallelism in economics and is analyzed as a non-cooperative game, which is much more difficult to win in an antitrust court.

Thus, NOPEC is unlikely to be implemented in the short-term and likely to be ineffective in the long-term. However, that certainly does not mean we should do nothing about the underlying addiction problem.

The answer was obvious to the Congress when it passed the Energy Independence and Security Act of 2007. You do not fight an addiction by increasing the supply of the drug, you fight an addiction by reducing demand. While Bush had emphasized the supply-side in his State of the Union address, the Congress knew that the answer was on the demand side.

There is certainly some benefit to increasing our ability to supply our own needs in the near term. That alleviates some of the short-term harm, but it does not solve the problem. We cannot now, nor are we likely ever to be able to meet all of our needs. Our ability to affect world oil prices is and will remain limited, if we do not reduce our consumption. In other words, from the point of view of dealing with our addiction, the supply-side option deserves the disrespect we usually give to short-term fixes, precisely because it is just that, a fix for the short term. In fact, given the reality of the situation, one can even say that promoting an approach like this is a classic strategy of a drug dealer, which makes it easier to stay on the drug to prevent the user from kicking the habit.

The single most important part of EISA, by far, was to reboot the fuel economy (CAFE, or corporate average fuel economy) standards governing all vehicles sold in the U.S. Transportation fuels are far and away the largest use of petroleum and the new law set out to slash that use, by reforming the approach to setting standards and reaffirming the commitment to achieve the maximum technically feasible and economically practicable reduction in consumption.

The reform of the approach, which eliminated many of the drawbacks of the old and the urgency of the problem that produced strong bipartisan support combined to produce a remarkably successful program. Unfortunately, the current administration wants to reverse direction. After ten years of building an effective comprehensive, cooperative federal and state program, the current administration proposes to not only stop the progress, but also destroy the structure that has worked so well.

THE DRAMATIC SUCCESS OF THE REBOOTED FUEL ECONOMY STANDARDS PROGRAM IS THE ONLY RESPONSIBLE APPROACH¹

We have filed lengthy comments (about 250 pages in long) at the cooperating agencies that demonstrates why this flip-flop on policy is bad for consumers and the economy. In my testimony today, I can only highlight the key points.

Our analysis over the years since EISA, in general, and since the publication of the Technical Analysis Report shows the following:

- The National Program standards have a benefit cost ratio greater than 6-to-1, and

¹ The remainder of this testimony is based on “Comments of the Consumer Federation of America, on Request for Comment on Reconsideration of the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light-Duty Vehicles; Request for Comment on Model Year 2021 Greenhouse Gas Emissions Standards, “U.S. Department Of Transportation, National Highway Traffic Safety Administration 49 CFR Parts 523, 531, 533, 536 & 537 [NHTSA–2016–0068], Environmental Protection Agency, 40 CFR Part 86, [EPA–HQ–OAR–2015–0827; FRL–9966–62– OAR], October 5, 2017.

- At a breakeven cost of gasoline of \$0.75 per gallon, which means that as long as gasoline stays above \$0.75 per gallon, the standards are justified.

Rolling back the 2021 standards and freezing the 2022-2025 standards would do great harm to consumers, the economy and the nation: A rollback would:

- Rob consumers of net savings of over \$4,500 per household,
- Prevent a reduction in operating costs of \$150 billion,
- Undermine \$150 billion of macroeconomic growth, and
- Forego over \$50 billion in environmental, health and other benefits.
- The total of \$350 billion of benefits foregone would yield automaker savings of only \$50 billion. In other words, the benefit cost ratio of a freeze and rollback is severely negative, -6 to 1.

Consistent with the long history of fuel economy standards, automakers' efforts to implement the standards show that the cost of compliance has been below the NHTSA/EPA projections and far below inflated industry estimates.

- The standards are well within the technological frontier of the industry as analyzed not only by NHTSA/EPA/CARB, but also MIT and the National Academy of Sciences.
- The rate of improvement is consistent with historical periods where standards were implemented.
- The standards are consistent with (or slightly below) other advanced industrial nations.
- Fuel economy pays for itself in a market where it has taken on much greater importance to consumers. As a result, fuel economy sells.
- With a gradual, but steady approach, developing new models to meet the standards and consumer needs has been evident in the marketplace and automakers have not only been complying with the standards, but exceeding them.

**ENERGY, ENVIRONMENTAL AND ADMINISTRATIVE LAW ON INCREASING FUEL EFFICIENCY:
THE TRUMP FLIP-FLOP IS ILLEGAL**

Because this is the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, I will finish my testimony with several observations on the legal status of the Trump Administration's flip-flop on transportation fuel efficiency. Given the above economic analysis that shows the enormously positive benefit-cost ratio and the automakers' ability to meet the standard, the rollback and/or freeze violate the statutes that charge the agencies with achieving maximum feasible energy savings/pollution reduction and the Executive Branch guidance the requires agencies to adopt rules that comply with the statutes and achieve maximum net benefits, as discussed below.

- To put it simply, from what I have seen thus far, the flip-flop is blatantly illegal and should be rejected by the courts.

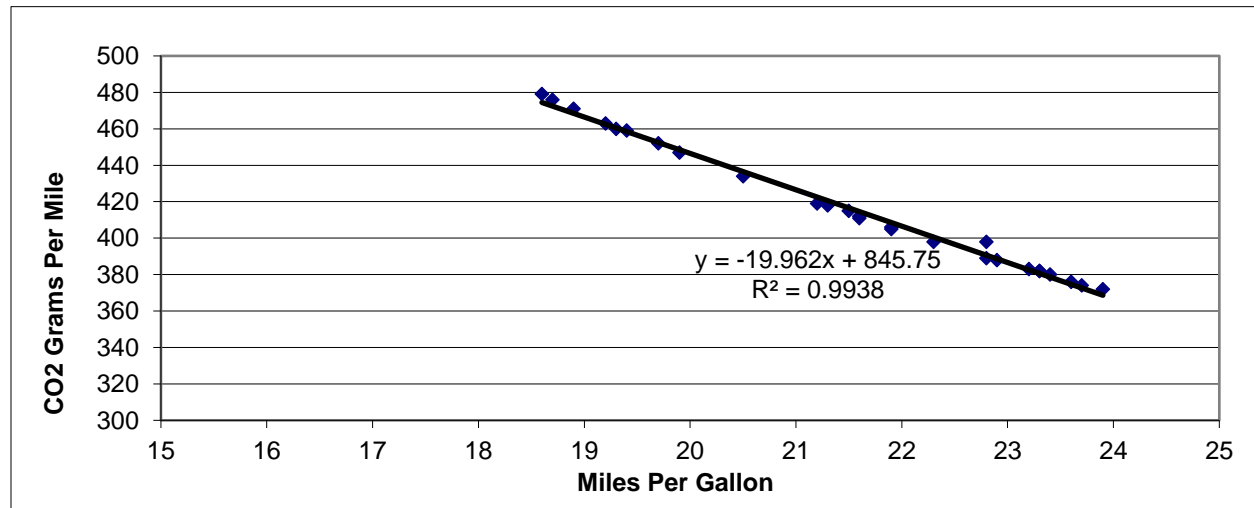
The administration has failed to build a record supporting the flip-flop and, based on our decade long intensive involvement in the regulatory proceedings before all three agencies involve, The National Highway Traffic Safety Administration, the Environmental Protection Agency, and the California Air Resources Board), it will not be able to build such a record that will meet the standards of the Administrative Procedure Act.

The analysis of policy options and actions must begin with the laws that empower executive branch agencies to take action. These laws, which establish the goals, are supplemented by executive orders that give further general guidance on how to proceed.

Over the past four decades with consistent, bipartisan majorities in congress and the executive branch have legislated an effective policy framework built on the recognition of the laws of economics and physics. Legislation and guidance from the executive branch have tried to help the agencies navigate the complex terrain of rulemaking. President Reagan's order (E.O. 12291, 1981) defined the overall structure of the analysis. Presidents Clinton (E.O. 12866, 1993), Bush (OMB-Circular A-4, 2003) and Obama (E.O. 13563, 2011) refined that approach. They have created an institutional structure that has been highly effective. The National Program with the explicit cooperation of three major federal and state regulatory agencies was the culmination of those decades of development.

While policymakers have followed the laws of economics in establishing an institutional framework for evaluating policy, policy must also conform to the laws of physics. Because there is a direct and near perfect physical relationship between energy consumption and pollution emissions, one of the clear impacts of efficiency standards, whether instituted for energy, environmental, or public health reasons, is a reduction in pollution (see Figure 1).

FIGURE 1: THE RELATIONSHIP BETWEEN FUEL ECONOMY AND CARBON DIOXIDE EMISSIONS



Source: Environmental Protection Agency, *Light Duty Automotive Technology: Carbon Dioxide Emission, and Fuel Economy Trends: 1975 Through 2009* November 2009, p. vii.

The near perfect correlation between the emission of pollutants and consumption of petroleum products in vehicles creates a powerful and inevitable connection between environmental protection and consumer pocketbook savings. The same is true for other fossil

fuels used directly by consumers or to produce electricity. The amount of pollution associated with electricity consumption will depend on the mix of resources used to generate it, and as reliance on fossil fuels declines, so too will the amount of pollution reduction, but the least-cost and most effective approach to reduction of emissions remains improving energy efficiency. The least cost approach to emissions reductions is to improve the efficiency of vehicles and appliances by reducing their energy consumption. All the agencies involved in setting standards, EPA, NHTSA, DOT, DOE be they emissions, appliances, or fuel economy are required to consider this economic benefit.

Considering the consumer pocketbook impact as a key aspect of the National Program's remarkable success, the determination by EPA and the CARB to continue the National Program as adopted in 2012, was well-founded on policy and legal grounds. The EPA final determination, should not have been pulled back for reconsideration, since the careful analysis done by the three agencies showed that the National Program has overwhelmingly positive benefits.²

Although NHTSA was required by statute to conduct a *de novo* rulemaking, the other agencies were not and the evidence developed in the TAR, the final determination and the contemporaneous California analysis,³ overwhelmingly supported continuation of the program, which they recommended.

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THE IMPORTANCE OF RIGOROUS BENEFIT-COST ANALYSIS TO CORRECT MARKET FAILURES

The principles that the laws and executive orders teach should be familiar to and learned by anyone who has taken Economics 101. Proper cost benefit analysis must include careful consideration of costs and benefits. The recent OMB advice letter calls for careful cost-benefit analysis. The challenge as always will be to ensure that agencies do not engage in "fuzzy math."

The cornerstone of the cost benefit justification for standards is the potential to produce a benefit. If the marketplace is performing well, it is difficult to justify policy intervention. If it is not performing well for any of a variety of reasons, policy interventions in the market can improve market performance.

We have documented and discussed these market imperfections at great length in comments, as well as papers and reports. While a number of conceptual approaches have been taken to analyze the market imperfection and failure issue, they all deliver the same message. Market imperfections affect energy consumption choices significantly and pervasively.

One of the reasons we are confident that EPA/NHTSA will not be able to build a record to support the Flip-flop is that EPA/NHTSA/CARB have identified a number of potential market

²This summary is drawn from the CFA NHTSA EIS Comments, pp. 2-3.

³ California Environmental Protection Agency Air Resource Board, California's Advanced Clean Cars Midterm Review: summary Report for the Technology Analysis of the Light Duty Vehicle Standards, January 18, 2017.

imperfections that the standards address (see Table1). One can argue about which imperfections are most important or most prominent, but there is no doubt that there are many that affect the energy efficiency market.

TABLE 1: IMPERFECTIONS POTENTIALLY ADDRESSED BY STANDARDS

Societal Failures	Structural Problems	Endemic Flaws	Transaction Costs	Behavioral
Externalities	Scale	Agency	Sunk Costs, Risk	Motivation
Information	Bundling	Asymmetric Information	Risk & Uncertainty	Perception
	Cost Structure	Moral Hazard	Imperfect Information	Calculation
	Product Cycle			Execution
	Availability			
	<i>Produce differentiation</i>			
	<i>Incrementalism</i>			

Even with well-documented market imperfections, there is no guarantee that the standards will deliver the benefits they claim. The design of standards is important. The literature points out that performance standards have positive effects if they are well-designed, enforced and updated. Of utmost importance in our framework we find that, “command but not control” performance standards work best when they embody six principles, which are clearly at the core of the National Program. They are:

- Long-Term, Product Neutral, Technology-neutral, Responsive to industry needs, Responsive to consumer needs, and Procompetitive.

CONCLUSION

In 2006 President Bush declared that America is addicted to oil. In 2007, Congress responded by adopting the only approach that made sense. The way you beat an addiction is not to increase supply, it is to kick the habit.

That is exactly what the Energy Independence and Security Act did, targeting gasoline consumption by rebooting the fuel economy standards. With bipartisan support and federal-state collaboration, the U.S. adopted standards to match all the major auto producing and driving nations in the world for the first time in U.S. history. The industry has remained on target, and the cost of energy efficiency has been falling, while the cost of gasoline is on another one of its rollercoasters. This is an important step when NOPEC seems out of reach in the short-term and likely to be ineffective in the long-term.

Unfortunately, by scrapping the standards and preventing the “clean cars” states, which represent about 40% of U.S. auto sales, from sticking with them, the current administration has decided to feed the habit rather than kick it. This will increase U.S. consumption by trillions of gallons over the next couple of decades and only auto makers and oil companies will profit, while consumers, the economy, national security and the environment all suffer.